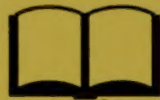


SAN FRANCISCO PUBLIC LIBRARY



3 1223 06155 9416

5 CLOSED
STACKS



GOVERNMENT INFORMATION CENTER
SAN FRANCISCO PUBLIC LIBRARY
SAN FRANCISCO
PUBLIC LIBRARY

REFERENCE
BOOK

Not to be taken from the Library

SEP 17 2001

3 1223 06155 9416

L500
R9
1990
No. 17

HEARING
SENATE RULES COMMITTEE
STATE OF CALIFORNIA

Legislature



DOCUMENTS DEPT.

JUL 31 1990

SAN FRANCISCO
PUBLIC LIBRARY

STATE CAPITOL
ROOM 113
SACRAMENTO, CALIFORNIA

WEDNESDAY, MAY 30, 1990
1:40 P.M.

Additional copies of this publication may be purchased for \$6.00 per copy from:

Joint Publications
State Capitol, Box 942849
Sacramento, CA 94249-0001

Please add California sales tax. Make checks payable to STATE OF CALIFORNIA.

HEARING

SENATE RULES COMMITTEE

STATE OF CALIFORNIA

SENATOR ROBERT BEVERLY

SENATOR HENRY HELLER

SENATOR NICHOLAS PETRIS

SENATOR ARNOLD

SENATOR DAVID ROBERTS, Chairman

SENATOR JEFFREY

CLIFF BURG, Executive STATE CAPITOL

PAT WEBB, Committee Secretary ROOM 113

RICK POLLENS, Comptroller SACRAMENTO, CALIFORNIA

NANCY MICHEL, Consultants on Governor's Appointments

ALAN HARRIS

JOSEPH W. HUSKEY, Superintendent

California State Prison

Kings County at Avondale WEDNESDAY, MAY 30, 1990

GEORGE R. KIRBY, Member 1:40 P.M.

Unemployment Insurance Appeals Board

JOHN F. KENNEDY, Legislative Advocate

California Labor Federation, AFL-CIO

ALAN C. NELSON, Deputy Director

Employment Development Department

JERRY S. STAINER, Superintendent

California State Prison

Kings County at Corcoran

FALCON PAUL MCCLINE, Chapter Chairman

Reported by: Chapter

Association of Black Correctional Workers

MARY H. BOFFALO, Chapter Chair

Corcoran Chapter

Chicago Correctional Workers Association

Evelyn J. Mizak
Shorthand Reporter

APPEARANCESMEMBERS PRESENT

SENATOR WILLIAM CRAVEN, Vice Chairman

SENATOR ROBERT BEVERLY

SENATOR HENRY MELLO

SENATOR NICHOLAS PETRIS

MEMBERS ABSENT

SENATOR DAVID ROBERTI, Chairman

STAFF PRESENT

CLIFF BERG, Executive Officer

PAT WEBB, Committee Secretary

RICK ROLLENS, Consultant on Bill Referrals

NANCY MICHEL, Consultant on Governor's Appointments

ALSO PRESENT

JOSEPH W. HUSKEY, Superintendent
California State Prison
Kings County at Avenal

GEORGE E. MEESE, Member
Unemployment Insurance Appeals Board

JOHN F. HENNING, Legislative Advocate
California Labor Federation, AFL-CIO

ALAN C. NELSON,, Deputy Director
Employment Development Department

JERRY S. STAINER, Superintendent
Californnia State Prison
Kings County at Corcoran

MALCOLM PAUL McCLURE, Chapter Chairperson
Central Valley Chapter
Association of Black Correctional Workers

MARY H. BOTELLO, Chapter Chair
Corcoran Chapter
Chicano Correctional Workers Association

APPEARANCES (CONTINUED)

1 GREG AVILA, Employee
2 Corcoran State Prison

3 HAROLD R. WALT, Director
4 Forestry and Fire Protection

5 RONALD BYWATER, President
6 California Department of Forestry Employees Association

7 DONALD COULTON BURNS
8 California Licensed Foresters Association

9 SENATOR BARRY KEENE
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

INDEXPage

Proceedings

1

Governor's Appointees:

JOSEPH W. HUSKEY, Superintendent
California State Prison
Kings County at Avenal

1

Motion

2

Committee Action

2

GEORGE E. MEESE, Member
Unemployment Insurance Appeals Board

3

Discussion re: Fixed Term Appointments

3

Decision to Hold for SENATOR MELLO

6

ALAN C. NELSON, Deputy Director
Employment Development Department

7

Questions by SENATOR PETRIS re:

Combining of Departments

8

SB 1937, Creation of New Labor Agency

9

Federal Immigration Reform & Control Act

10

Impact on Department's Ability to
Provide Services

12

Hiring Handicapped and Disabled

12

Length of Term

13

Motion

14

Committee Action

15

JERRY S. STAINER, Superintendent
California State Prison
Kings County at Corcoran

15

Questions by SENATOR PETRIS re:

Current Prison Population

16

INDEX (CONTINUED)

1	Public Impression	17
2	Comments by SENATOR CRAVEN	18
3	Program to Relieve Overcrowdedness	19
4	Return to Custody Program	20
5	Educational Programs	21
6	Motion	22
7	<u>Witnesses in Support:</u>	
8	PAUL McCLURE, Chapter Chairperson	
9	Central Valley Chapter	
	Association of Black Correctional Workers	23
10	MARY H. BOTELLO, Chapter Chair	
11	Corcoran Chapter	
	Chicano Correctional Workers Association	23
12	GREG AVILA, Employee	
13	Corcoran State Prison	24
14	Committee Action	25
15	GEORGE E. MEESE, Member	
	Unemployment Insurance Appeals Board	25
16	Statement by SENATOR CRAVEN	25
17	Statement by SENATOR MELLO	26
18	<u>Witness in Opposition:</u>	
19	JACK HENNING, Legislative Advocate	
20	California Labor Federation	28
21	Questions by SENATOR PETRIS re:	
22	Consistency of Board Decisions	30
23	Obedience to Statute	30
24	Response by MR. MEESE	30
25	Questions by SENATOR CRAVEN re:	
26	Role of Advocates in Hearings	32
27	Labor Representation	32
28	Questions by SENATOR PETRIS re:	

INDEX (CONTINUED)

1	Procedure at Appellate Level	33
2	Role of Advocates	33
3	Percentage of Union Employees	34
4	Questions by SENATOR MELLO re:	
5	Graphs Representing Board Decisions	35
6	Welfare vs. Unemployment Benefits	38
7	Request for Comments on Graphs at	
8	Future Hearing	40
9	Drug Testing	42
10	Questions by SENATOR PETRIS re:	
11	Native Americans and Use of Drugs During	
12	Religious Ceremonies	44
13	Discussion re: Deferral	46
14	Committee Action	47
15	HAROLD R. WALT, Director	
16	Forestry and Fire Protection	47
17	<u>Witnesses in Support:</u>	
18	RONALD BYWATER, President	
19	California Department of Forestry Employees	
20	Association	48
21	DONALD BURNS	
22	California Licensed Foresters Association	49
23	SENATOR BARRY KEENE	49
24	Statement by SENATOR MELLO re:	
25	Nominee's Background and Experience	50
26	Motion	51
27	Committee Action	52
28	Termination of Proceedings	52
	Certificate of Reporter	53

P-R-O-C-E-E-D-I-N-G-S

--oo0oo--

SENATOR CRAVEN: If we may, I'd like to move to Item Three, which is Governor's Appointees appearing today, and begin with Joseph W. Huskey, Superintendent, California State Prison, Kings County at Avenal.

Mr. Huskey, we would ask you to tell us why you feel that you are qualified for this position, and it's something that we ask all nominees.

MR. HUSKEY: Mr. Chairman and Members, I have over 30 years of experience in State service, including three departments, six institutions. I've worked for the Department of the Youth Authority, and went to work for the Department of Corrections, and worked my way up through the uniformed ranks on the opening crew of the California Correctional Center at Susanville back in '63. I've worked in the Conservation Camp System.

I went to the California Men's Colony. I worked as the Correctional Counselor series: CC I, Correctional Counselor II, Correctional Counselor III. I worked at Susanville as a program administrator during the turbulent late 1970s.

I managed to accrue a Master's and a Bachelor's Degree while working with the State.

I was part of the reactivation crew of the California Men's Colony West Facility as a program administrator, Social Warden, and Chief Deputy Warden.

1 SENATOR CRAVEN: Very well. You have a long and
2 distinguished record. I don't think there's any question about
3 that.

4 Senator Petris, have you any questions of Mr. Huskey?

5 SENATOR PETRIS: No.

6 SENATOR CRAVEN: Senator Beverly.

7 SENATOR BEVERLY: Did you inquire about opposition?

8 SENATOR CRAVEN: Is there anyone in the audience who
9 wishes to testify either pro or con? There appears to be none.

10 SENATOR BEVERLY: Move the approval of the
11 nomination.

12 SENATOR CRAVEN: Senator Beverly moves the
13 appointment of Mr. Huskey to the Floor.

14 Call the Roll.

15 SECRETARY WEBB: Senator Beverly.

16 SENATOR BEVERLY: Aye.

17 SECRETARY WEBB: Senator Mello. Senator Petris.

18 SENATOR PETRIS: Aye.

19 SECRETARY WEBB: Senator Craven.

20 SENATOR CRAVEN: Aye.

21 SECRETARY WEBB: Senator Roberti.

22 Three to zero.

23 SENATOR CRAVEN: The measure is out, three-zero.
24 Congratulations.

25 MR. HUSKEY: Thank you very much.

26 SENATOR CRAVEN: Next is George E. Meese, Member,
27 Unemployment Insurance Appeals Board.
28

1 Mr. Meese, welcome back.

2 MR. MEESE: Thank you.

3 SENATOR CRAVEN: Do you want to give us a little
4 background, as you have done in times past?

5 MR. MEESE: Very briefly, before I came to the State
6 government, I was with the court system in Alameda County for 25
7 years as a court administrator. And for the last four and a
8 half years I've been on the Unemployment Insurance Appeals
9 Board, the last three years as its Vice Chairman.

10 SENATOR CRAVEN: Mr. Meese has been before us back
11 in, what, '86 was it?

12 MR. MEESE: That's correct, '86.

13 SENATOR CRAVEN: Senator Petris, do you have comment?

14 SENATOR PETRIS: I'm trying to find the length of the
15 term. What is your term?

16 MR. MEESE: Four years.

17 SENATOR PETRIS: Fixed term, four years?

18 MR. MEESE: Fixed term. On September the 1st of '93,
19 this term will expire.

20 SENATOR PETRIS: Well, I have a problem with that.

21 Each time these things come up, Senator Roberti seems
22 to be out, and I'd like to have him --

23 SENATOR CRAVEN: Do you think he does that on
24 purpose?

25 SENATOR PETRIS: No, it's just a coincidence, I'm
26 sure.

27 I expressed this at the last hearing, without any
28

1 reflection on the individual nominee. I remember Governor
2 Deukmejian in a different capacity severely criticizing an
3 outgoing Democratic Governor for making fixed term appointments
4 in his last year, and others as well, as a matter of being
5 unfair to the new Governor, who should have his or her own
6 appointees when the new Governor comes in.

7 This goes into '93. That'll cover --

8 MR. MEESE: This term started, Senator, in September
9 of last year.

10 SENATOR PETRIS: Yes, so it has three years to go.

11 MR. MEESE: Yes. It's not a this year appointment.
12 It was September of '89 when the term started.

13 SENATOR PETRIS: Yes, so it'll go to '93.

14 MR. MEESE: Yes.

15 SENATOR PETRIS: Elections are this year.

16 MR. MEESE: It would have left this spot vacant from
17 September the 1st of last year until this year.

18 SENATOR PETRIS: What is his deadline for
19 confirmation? Is it September?

20 MS. MICHEL: September 1st.

21 SENATOR PETRIS: So we have some time.

22 MS. MICHEL: Yes, we have time.

23 SENATOR PETRIS: At the last meeting when I raised
24 this point, there was a seven-plus year appointment, which I
25 just think is totally unfair, without any comment on the
26 individual. And we had some discussion, and Senator Roberti
27 was going to come up with a recommendation as to kind of a
28

1 cut-off date, taking into consideration how long the person
2 had already been serving.

3 In your case, if you're confirmed, your term would
4 have started way back in September of last year, and that has
5 a role. That would be easier to accept than an appointment
6 this month, for example.

7 But I would like to defer this one also until we
8 get some kind of a fixed policy. It may only take until next
9 week; I don't know.

10 SENATOR CRAVEN: This is an item, Mr. Meese, that
11 we ran into, as Senator Petris has said, last week. At that
12 time, our Chairman made mention of the fact that he wanted to
13 give it some more thought, and a little bit of an
14 investigation to come up with what he deemed to be the right
15 and appropriate answer.

16 I don't really like to foreclose on you,
17 particularly in view of the fact that Senator Mello is not
18 with us.

19 May we just proceed, Senator Petris, and if you
20 have any other questions you might want to ask, and then
21 we'll wait until Senator Mello comes and see what his
22 attitude is? It may well be the same as your own.

23 SENATOR PETRIS: It's all right.

24 SENATOR BEVERLY: One observation, Mr. Chairman.

25 SENATOR CRAVEN: Yes, sir.

26 SENATOR BEVERLY: The thinking last week was that
27 the policy would be enunciated and resolved prior to the
28

1 July recess.

2 SENATOR PETRIS: Yes, sometime after next week and
3 prior to the July recess.

4 SENATOR BEVERLY: After next Tuesday, and before
5 the July recess.

6 SENATOR PETRIS: So, this leaves us time. That's
7 why I asked what the deadline is.

8 If we were right up against a deadline, we may have
9 to make a decision today, but we don't need to.

10 I have no objection to taking testimony.

11 SENATOR CRAVEN: Very well.

12 The point Senator Petris enunciated is one which
13 really does not bear upon your particular situation, since
14 you have been, in fact, in office, we'll say, a year in this
15 job. But if it's something that's just at the tail end of a
16 term, and it's a long, ongoing thing that goes into not only
17 one Governor's term but the second term, that's the reason
18 the point was raised.

19 Senator Beverly, do you have any further questions?

20 SENATOR BEVERLY: No questions.

21 SENATOR CRAVEN: If we may, let's hold the item on
22 the agenda until Senator Mello comes, if we may.

23 SENATOR PETRIS: All right.

24 SENATOR CRAVEN: Thank you, sir, very much.

25 Next is Alan C. Nelson, Deputy Director of the
26 Employment Development Department.

27 SENATOR PETRIS: We're going to come back to this
28

1 when Senator Mello comes in.

2 SENATOR CRAVEN: Yes. I want to wait, Mr. Henning,
3 until Senator Mello gets here.

4 MR. NELSON: Mr. Chairman, Alan Nelson, the
5 nominated Deputy Director of the Employment Development
6 Department. It's the General Counsel position there.

7 I'm pleased to be before the Committee. I am a
8 lawyer; 30 year's experience at the Bar with extensive
9 experience at the county government level in Alameda County,
10 the State level here when I was also in the same Department
11 when it was named Human Resources Development back in the
12 Reagan governorship. I was there as the Director of the
13 Department of Rehabilitation. I've gone on from there to
14 private business with the telephone company.

15 I've been in Washington basically the last eight
16 years as Commissioner with the Immigration Service, and so in
17 a sense, am returning home to a department where I'd worked
18 before, so I believe my experience in terms of litigation,
19 legislation, advice and counsel, the various issues that
20 involve EDD certainly provide the kind of background to serve
21 the State of California.

22 Thank you, Mr. Chairman.

23 SENATOR CRAVEN: Very well, thank you.

24 Senator Petris.

25 SENATOR PETRIS: I have some questions.

26 He's almost a constituent, I might add, a lot of
27 years in Alameda County.
28

1 We've been trying to go through some reforms in the
2 workers' comp. and related areas, and one of the suggestions
3 that's received some attention is combining workers' comp.,
4 state disability and health care and vocational rehab.
5 services in one window under the health and disability
6 program.

7 Have you had an opportunity to think about that, or
8 discuss it in any of your meetings? Do you have a viewpoint?

9 MR. NELSON: I have not had that opportunity,
10 Senator. Having worked a lot in government at all levels,
11 there are always, of course, questions about the proper
12 organization and reorganization.

13 I'm sure that thought has some merit to it. On the
14 other hand, to a certain extent the adage, "if it ain't
15 broke, don't fix it." EDD, of course, has the disability
16 insurance program; does not have the other elements you
17 mentioned. But I think the processing of disability
18 insurance, particularly the collection of the taxes tied in
19 with the unemployment insurance and the State income tax,
20 which EDD collects, works very well.

21 So, I'm not sure, off the top, and that's what I'm
22 reacting to, that that necessarily would be something that I
23 would suggest; although, again, I have not had a chance to
24 study it. It certainly has merit for both the Legislature
25 and the executive branch to look into it as to how to better
26 serve the public.

27 SENATOR PETRIS: You don't have any strong
28

1 feelings, then --

2 MR. NELSON: No, sir.

3 SENATOR PETRIS: -- whether it would hurt or help
4 the particular employees that are involved?

5 MR. NELSON: No, I don't.

6 I think the one thing, of course, we all have to be
7 concerned about is that we not have duplication. Now, you
8 could argue, of course, if you consolidate a number of
9 things, that helps. On the other hand, when I believe all
10 those programs are working well, I think you have to look at
11 that question, whether there would be extra administrative
12 costs or duplication by such a change.

13 But it would need to be studied, and I'd certainly
14 be happy to get additional information to you or the
15 Committee.

16 SENATOR PETRIS: Let me ask about another
17 consolidation move from another direction. This is a bill,
18 actually, that's pending.

19 SB 1937 proposes a new Labor Agency. It would
20 combine EDD with the Department of Industrial Relations to
21 get a more cohesive and overall view.

22 Do you think that's a good idea?

23 MR. NELSON: Well again, Senator, I'd use the same
24 comments I did before. I really haven't had a chance to get
25 into that issue in depth, so I would only be reacting off the
26 top of the head.

27 I do think some of the same elements are there.
28

1 Reorganizations generally should be looked at carefully and
2 deliberately because there are usually pros and cons.

3 Again, I think EDD functions well. The
4 unemployment insurance program is, of course, the biggest
5 piece, the whole job service. We function under federal
6 funds and federal authority on the whole Job Training
7 Partnership Act area. I think, overall, those work pretty
8 well.

9 Whether there'd be reason to combine those two
10 State agencies, again, I think would take a lot of study. So
11 again, I can't give you a strong, definitive point of view.
12 I think it's worth studying. I would have to question a
13 little whether it is the right solution.

14 SENATOR PETRIS: Do you know what the
15 administration's position is on the bill?

16 MR. NELSON: I believe they're opposing it, but I'm
17 not positive on that. I'd have to verify that.

18 SENATOR PETRIS: You haven't been asked for your
19 input on it?

20 MR. NELSON: No, not directly, sir, no.

21 SENATOR PETRIS: How is the federal Immigration
22 Reform Act working with respect to the hiring of people?

23 MR. NELSON: Over all, Senator Petris, I think the
24 Immigration Reform and Control Act has worked well in its
25 little over three years of being. Of course, one element was
26 legalizing some 3 million people. That was done very
27 effectively. That is a combined total of six times the total
28

1 of all other people in the world ever legalized. I think
2 that was a very important thing to bring people out of the
3 shadows and make them legal and on the track to permanent
4 residency and citizenship.

5 On the enforcement side, I think the employer
6 sanctions, certainly since the Immigration bill was passed in
7 November of '86, we had a reduction of about 50 percent in
8 illegal immigration for a period of time. And I think that's
9 a healthy indication that we had the right elements there:
10 enhanced border security; the employer sanctions; keeping
11 illegal aliens from improperly drawing benefits to which
12 they're not entitled; and tougher provisions against criminal
13 aliens, particularly those involved in drugs or serious
14 crimes. I think you have the right elements there.

15 The government did put additional dollars in, so I
16 think, like a lot of things, it takes time. It's like drunk
17 driving, or drugs, or other things, you're never going to
18 stop the problem entirely, but I think it's worked well.

19 I think during the decade of the '80s, and I was
20 proud to be part of that, we had the largest legal
21 immigration in any ten years in our history: 10 million
22 people that came in legally. At the same time, of course, a
23 problem with illegal immigration, and I think you have the
24 right elements in that bill.

25 It was off to a fair start, and it needs a lot of
26 continued attention and work.

27 SENATOR PETRIS: What's the impact been on your
28

1 ability, your Department's ability, to provide the various
2 services? Has it been overloaded, EDD?

3 MR. NELSON: No, I think EDD has been able to
4 handle the issues.

5 One of the issues that came up a couple of years
6 ago was whether EDD would certify workers to comply with the
7 Immigration bill. Of course, the Legislature here deemed
8 that that not be done.

9 But I think, over all, EDD has done well. One of
10 the interesting things, I think, for now and the future,
11 Senator and Committee, is that there are opportunities for
12 legal residents, whether aliens or citizens, to gain
13 employment that, heretofore, hasn't been as available. So,
14 there are jobs that have been held by illegal aliens that now
15 can and should be available for citizens and legal residents.
16 I think that's a real potential that needs to be tapped.

17 SENATOR PETRIS: Do you have any special program to
18 encourage the hiring of the disabled? I keep hearing ads on
19 the radio that are public service type of ads. Do you have a
20 program going?

21 MR. NELSON: Yes, sir, we do.

22 Again, from my former work as I mentioned, Director
23 of Rehabilitation, and I'm very pleased that I was part of
24 the program along with the Legislature to include the
25 handicapped under the California Fair Employment and
26 Practices Act.

27 Now we see the U.S. Congress is about ready to do
28

1 the same thing with the American's Disabled Act, and I think
2 that's an excellent move. So, I think that helps, that law,
3 our California law and the new federal law.

4 I also was pleased when I was both Director of
5 Rehabilitation and thereafter to be a member of the
6 California Governor's Committee for Employment of the
7 Handicapped, and was Chairman of that Committee in 1981,
8 actually an appointment of Governor Brown, and I continue
9 today to be active there.

10 So we have that Committee, which is very active and
11 very effective -- a partnership of business, labor, and the
12 public sector -- that works well. We have a number of
13 programs within EDD, and also the Department of
14 Rehabilitation, that serve the disabled.

15 So, I think, again, there's a lot of opportunity
16 there, a lot of good programs. I think with the new federal
17 law, I hope there are more opportunities for disabled
18 employment.

19 SENATOR PETRIS: What's the length of your term?

20 MR. NELSON: It's a pleasure appointment.

21 SENATOR PETRIS: As General Counsel?

22 MR. NELSON: Yes, sir. It's Deputy Director --

23 SENATOR PETRIS: Officially the title is Deputy
24 Director?

25 MR. NELSON: Correct, but the working title --

26 SENATOR PETRIS: But your duties are General
27 Counsel?
28

1 MR. NELSON: Yes, sir, that's correct.

2 SENATOR PETRIS: Thank you.

3 MR. NELSON: Thank you, sir.

4 SENATOR CRAVEN: Senator Mello.

5 SENATOR MELLO: I just want to know if
6 Ms. Gonzales supports you.

7 MR. NELSON: Yes, I believe she does. I hope so.

8 SENATOR MELLO: Thank you.

9 MR. NELSON: She's just joined us, of course, and
10 I'm very pleased. She's been excellent to work for in the
11 two weeks or so that she's been there.

12 SENATOR MELLO: Thank you.

13 SENATOR CRAVEN: Is there anyone who wishes to
14 testify in favor or in opposition to this appointment? There
15 appears to be none.

16 SENATOR BEVERLY: Move the approval of the
17 nomination.

18 SENATOR CRAVEN: Senator Beverly moves Mr. Nelson's
19 nomination to the Floor.

20 MR. NELSON: Thank you, Mr. Chairman.

21 SENATOR CRAVEN: Call the roll.

22 SECRETARY WEBB: Senator Beverly.

23 SENATOR BEVERLY: Aye.

24 SECRETARY WEBB: Senator Mello.

25 SENATOR MELLO: Aye.

26 SECRETARY WEBB: Senator Petris.

27 SENATOR PETRIS: Aye.
28

1 SECRETARY WEBB: Senator Craven.

2 SENATOR CRAVEN: Aye.

3 SECRETARY WEBB: Senator Roberti.

4 SENATOR CRAVEN: The measure's out, four to zero.
5 Congratulations.

6 MR. NELSON: Thank you, sir.

7 SENATOR CRAVEN: Next is Jerry S. Stainer,
8 Superintendent, California State Prison, Kings County,
9 Corcoran.

10 Good afternoon, sir.

11 MR. STAINER: Good afternoon.

12 SENATOR CRAVEN: Would you give us a little run
13 down as the others have done, please, Mr. Stainer?

14 MR. STAINER: Yes.

15 I'm a career employee of the California Department
16 of Corrections, beginning my career about 26 years ago at the
17 California Correctional Center at Susanville.

18 I've promoted through the custody ranks prior to
19 becoming an administrator approximately 12 years ago. I
20 gained valuable experience while being employed in numerous
21 Correctional employee classifications and working at five
22 different prisons, the Prison Road Camp, and Departmental
23 Headquarters.

24 I've worked with all security level inmates and was
25 involved in new prison construction and activation, with
26 primary responsibility over the Maximum Security Units at the
27 California Correctional Institution at Tehachapi.
28

1 I am sensitive to physical [sic] issues and
2 budgetary constraints, and will ensure that the institution
3 operations are maintained within budgetary allotments.

4 I've always supported Departmental goals, and I've
5 maintained a strong supportive position on the law and
6 policies enacted by the Legislature.

7 With the support of this Committee, I will continue
8 in the management of a responsive, cohesive work force at the
9 California State Prison at Corcoran.

10 SENATOR CRAVEN: Very well.

11 Senator Petris.

12 SENATOR PETRIS: What's the current population
13 total of all the prisons?

14 MR. STAINER: Over 90,000 of all the prisons.

15 SENATOR PETRIS: And how many new ones do we have
16 coming on line?

17 MR. STAINER: We've got five in the works right
18 now; five additional ones with some others on the planning
19 board.

20 SENATOR PETRIS: And are all the prisons under
21 capacity?

22 MR. STAINER: Are over capacity, over design
23 capacity, yes, sir.

24 SENATOR PETRIS: Are over the design capacity?

25 MR. STAINER: Right.

26 SENATOR PETRIS: By what percentage?

27 MR. STAINER: It's right at the -- I think it's
28

1 right at 170-some percent. Our institution is --

2 SENATOR PETRIS: One seventy?

3 MR. STAINER: Yes, it's over 170 percent. I think
4 it's 178.

5 Our institution is at -- our general population's
6 at 198 percent, and then we have a Security Housing Unit
7 that's at design capacity, 100 percent.

8 SENATOR PETRIS: Do you have a P.R. Office either
9 statewide or at Corcoran?

10 MR. STAINER: Yes, we do.

11 SENATOR PETRIS: Do you publish these figures?

12 MR. STAINER: Yes.

13 SENATOR PETRIS: Are they used by the press?

14 MR. STAINER: Yes, they are.

15 SENATOR PETRIS: I don't get that impression.

16 The impression I get is that nobody gets convicted
17 and nobody goes to prison because we've got a bunch of
18 muddle-headed judges that free everybody.

19 But you've got 170 percent of capacity; you've got
20 90,000 prisoners. That's more than any state in the Union;
21 isn't it?

22 MR. STAINER: True.

23 SENATOR PETRIS: Both on population and any other
24 way you want to slice it.

25 MR. STAINER: It's true.

26 SENATOR PETRIS: So, somebody isn't getting the
27 message about what's actually happening. I mean, a lot of
28

1 people aren't getting the message. I hear it on the talk
2 shows; I hear it when I go to meetings; I talk to groups.
3 They keep asking me, "When are you going to start sending
4 people to prison? All you do is let them out. You don't
5 even send them in!"

6 MR. STAINER: We can't keep up with what's coming
7 in right now.

8 SENATOR PETRIS: Can I quote you on that?

9 MR. STAINER: Yes, huh-huh.

10 SENATOR PETRIS: When I'm confronted with erroneous
11 information?

12 MR. STAINER: Yes, you sure can.

13 SENATOR PETRIS: How do you account for that
14 misinformation out there? Is there a disinformation office
15 somewhere else?

16 MR. STAINER: Not that I know of.

17 The people I talk to -- of course, I associate a
18 lot with prison people, and you know, they're all aware of
19 it, but you're probably right. There's a lot of people in
20 the community that aren't aware of the over population.

21 SENATOR CRAVEN: I think the only time, really,
22 that you get publicity -- if that be the appropriate term --
23 is when there is some devastating altercation within a penal
24 institution wherein a prisoner is alleged to have been
25 beaten, or one is murdered, and then you break into the
26 press. And people are aware of it at that time.

27 But as Senator Petris says, in the normal sense,
28

1 you just live with the problem and do the best you can, and
2 nobody seems to get too concerned about it. They get excited
3 when they read it in the paper.

4 I know it happens in the San Diego County Jail,
5 which I am, perhaps, more familiar with than the penal
6 system, and the Sheriff there -- well, as a matter of fact,
7 he decided not to run again, and I think it was because of
8 publicity garnered through problems within his facility,
9 which grossly understaffed and undersized.

10 MR. STAINER: The majority of publicity we do get
11 is negative.

12 SENATOR PETRIS: Do you have a program for
13 relieving the overcrowdedness?

14 MR. STAINER: We have -- right now, at my
15 institution?

16 SENATOR PETRIS: Yes.

17 MR. STAINER: We've gone into one of the
18 gymnasiums, activated it for overcrowding, and July 1st,
19 we're going into another one of our gymnasiums. We've got
20 five separate facilities there.

21 SENATOR PETRIS: What does that mean? Using the
22 gym for housing?

23 MR. STAINER: Housing people. We've got 121 in one
24 gym, and July 1st we're going in with 121 in another gym.

25 We're projected -- if the intake stays as it is,
26 we're projected in September probably to go into our last
27 gym.
28

1 SENATOR PETRIS: Isn't the gym an important part of
2 the program to help let off steam?

3 MR. STAINER: Yes, it is.

4 SENATOR PETRIS: That's kind of a difficult move;
5 isn't it?

6 MR. STAINER: Well, we're getting them, and we've
7 got to put them somewhere. We have no other alternatives.

8 The Department is working toward, you know, we're
9 looking at all the alternatives: your Return to Custody
10 Centers; expanding camps. You know, we may even have to go
11 into day rooms eventually.

12 SENATOR CRAVEN: I think, and Senator Petris will
13 probably recall, we've had other superintendents in and
14 they've said that they're using gymnasiums, as you are.

15 SENATOR PETRIS: Right.

16 MR. STAINER: Right.

17 SENATOR CRAVEN: So, it's a rather pervasive
18 problem, presumably.

19 Anything further?

20 SENATOR PETRIS: The Return to Custody is for those
21 on short terms; right?

22 MR. STAINER: Short term, under a year, with
23 specific criteria, you know, no violence.

24 SENATOR PETRIS: As to the nature of the crime?

25 MR. STAINER: Right.

26 SENATOR PETRIS: The nonviolent.

27 MR. STAINER: Nonviolent.
28

1 SENATOR PETRIS: Is that in effect throughout the
2 state?

3 MR. STAINER: Yes, it is.

4 Well, there's specific Centers located throughout
5 the state.

6 SENATOR PETRIS: But it's a statewide policy?

7 MR. STAINER: Right.

8 SENATOR PETRIS: How about illiteracy? Are you
9 offering courses?

10 MR. STAINER: Yes, we are. We've got English as a
11 Second Language. We've got a couple classes there.

12 We start right at basic -- adult basic education
13 levels, grades 1-3, 4-6, and we have --

14 SENATOR PETRIS: Are those compulsory?

15 MR. STAINER: We require inmates that do not test
16 at the 6th grade level, we require them to go to classes.

17 SENATOR PETRIS: How do they do there?

18 MR. STAINER: With regard --

19 SENATOR PETRIS: Do they turn out to be good
20 students?

21 MR. STAINER: Yes.

22 SENATOR PETRIS: Do they learn how to read and
23 write?

24 MR. STAINER: Yes, right. We have some students
25 who --

26 SENATOR PETRIS: Are they cooperative?

27 MR. STAINER: The majority of them are cooperative,
28

1 yes.

2 SENATOR PETRIS: What's the percentage of inmates
3 who are required to go through this?

4 MR. STAINER: Right now we have -- we have about,
5 of our population, we have about 12 percent that are either
6 in educational or vocational programs. That's 12 percent of
7 our overcrowded figure, which is almost 200 percent.

8 A study that the Department did with regards to
9 literacy training and requirements of the Stirling bill was
10 -- it showed that about 56 percent of the males did not read
11 at the 9th grade level. We are -- you know, we push those
12 individuals that don't test up to 6th grade into that
13 reading.

14 SENATOR PETRIS: How about the other educational
15 programs? Are those voluntary? Vocational, for example?

16 MR. STAINER: The vocational -- yeah, they're
17 voluntary. We encourage specific individuals to go into it
18 based on their background and what their experiences have
19 been.

20 SENATOR PETRIS: Thank you.

21 SENATOR CRAVEN: Senator Mello.

22 SENATOR MELLO: No questions.

23 SENATOR BEVERLY: Move the approval of the
24 nomination.

25 SENATOR CRAVEN: Senator Beverly moves.

26 Is there anyone in the audience who wishes to
27 testify in favor of Mr. Stainer?
28

1 MR. McCLURE: My name is Paul McClure. I'm the
2 Chapter Chairperson of the Central Valley Chapter of the
3 Association of Black Correctional Workers.

4 I've personally known Warden Stainer since 1975,
5 and being at California State Prison at Corcoran is the third
6 institution I've had the pleasure of working at with him.

7 I've known him to be consistent, knowledgeable,
8 compassionate and fair, which are all the qualities needed to
9 be an excellent warden.

10 Warden Stainer has the reputation of being an
11 open-minded and very innovative person. I've always known
12 affirmative action is a reality in his policy and not a
13 binder sitting on the shelf.

14 He's always demanded and asked his managers to
15 treat his employees fairly. That's all I or the Association
16 of Black Correctional Workers could ask.

17 The Central Valley Chapter of the Association of
18 Black Correctional Workers unanimously support Warden Stainer
19 as our new leader at California State Prison, Corcoran.

20 SENATOR CRAVEN: Thank you very much, sir.

21 Does anyone else wish to comment? Yes, ma'am.
22 Please come forward, state your name.

23 MS. BOTELLO: I wrote out my speech.

24 I'd like to start out by saying good afternoon
25 to all those here in attendance this afternoon.

26 My name is Mary Botello, and I'm an employee at
27 Corcoran State Prison. I am here today to speak on behalf of
28

1 the Corcoran Chapter of the Chicano Correctional Workers
2 Association, of which I am the Chairman at Corcoran.

3 The Association consists of 1500 professional
4 employees within the Department of Corrections.

5 We, the Corcoran Chapter of CCWA, would like to go
6 on record as endorsing Mr. Jerry Stainer for Warden of the
7 California State Prison at Corcoran.

8 Although Mr. Stainer has only been with us at the
9 institution for a short while, he has already demonstrated
10 the knowledge, maturity, and leadership necessary, coupling
11 this position with an outstanding record of service with the
12 staff of California, covering over 26 years.

13 We the people of CCWA are confident that
14 Mr. Stainer is the man to lead our prison into the '90s.

15 In closing, I wish to thank all the distinguished
16 Members of the Senate here today for allowing us the
17 opportunity to express our views of the issue before you.

18 Thank you.

19 SENATOR CRAVEN: Thank you very much.

20 Anyone else? Yes, sir, come forward, please.

21 State your name.

22 MR. AVILA: Good afternoon. My name is Greg
23 Avila. I'm an employee of Corcoran State Prison.

24 I've known Mr. Stainer for approximately 15 years.
25 During that period of time and at present, he has shown to be
26 a just and fair man, not only as it relates to staff, but to
27 inmates alike.
28

1 Mr. Stainer is a strong advocate of the affirmative
2 action program. He encourages the hiring of physically
3 handicapped, with the women, and of ethnic minorities.

4 In closing, I'd like to support and recommend that
5 Mr. Stainer be confirmed as Warden at Corcoran State Prison.

6 SENATOR CRAVEN: Thank you very much, Mr. Avila.

7 Anyone else? There appears to be none.

8 Senator Beverly moved the nomination to the Floor.
9 Call the roll.

10 SECRETARY WEBB: Senator Beverly.

11 SENATOR BEVERLY: Aye.

12 SECRETARY WEBB: Senator Mello.

13 SENATOR MELLO: Aye.

14 SECRETARY WEBB: Senator Petris.

15 SENATOR PETRIS: Aye.

16 SECRETARY WEBB: Senator Craven.

17 SENATOR CRAVEN: Aye.

18 SECRETARY WEBB: Senator Roberti.

19 SENATOR CRAVEN: Four-zero; the measure's out and
20 to the Floor.

21 Congratulations.

22 MR. STAINER: Thank you.

23 SENATOR CRAVEN: Thank you very much.

24 Now that Senator Mello is with us, perhaps it would
25 be appropriate if we'd ask Mr. Meese to come back again.

26 Senator Mello, Mr. Meese testified just briefly,
27 did his background and his statement, and you, I think, are
28

1 familiar with his background since you've sat in judgment of
2 him before on a nomination.

3 Senator Petris at the time raised the point that we
4 had discussed last week. If you'll recall, the President Pro
5 Tem. said that it was an issue on the appointments at the
6 last moment, if you will, that he wanted to study and come up
7 with some degree of recommendation.

8 One of the things that has occurred to all of us is
9 the fact that there is a difference, obviously, between an
10 appointment which is made now and which may run for seven
11 years, as some do. Mr. Meese's appointment was effective
12 last September, so it really isn't the 11th hour as that
13 which we had discussed at a prior time.

14 So, with that background, I just want to see if you
15 have any comment on that point, or if you'd just like to
16 proceed with the interrogation of Mr. Meese.

17 SENATOR MELLO: Thank you, Mr. Chairman, for that
18 analysis.

19 First of all, I voted for Mr. Meese twice in the
20 past when he was over at DMV and this job here.

21 But I've been asked by members of the
22 administration about what the Rules Committee's going to do
23 on appointments. My position is, we're going to take them
24 one at a time, one by one, on their merits. As far as I
25 know, there's no plan to hold off on anybody or to rush
26 people through.

27 However, I want to respect any Member of this Rules
28

1 Committee that has reason to want to hold over the
2 nomination or the confirmation for getting additional
3 information, as requested, I understand, by Senator Petris.
4 I would want to honor that as I would your own request, or
5 Senator Beverly, or Senator Roberti's request.

6 SENATOR CRAVEN: Yes.

7 SENATOR MELLO: What Senator Petris has asked for
8 is not, I think, unreasonable really, because he does have
9 until September, so he's not in jeopardy.

10 SENATOR CRAVEN: No, he has some time, obviously.

11 My only thought, and I have no objection to
12 deferring to Senator Petris at all, but whether we want to
13 utilize that which we discussed last week and apply it to
14 this subject is something that I'm not sure even Senator
15 Petris knows. He may find a differentiation there, and he'll
16 have the opportunity to speak to that point.

17 Mr. Henning wanted to make comment, and with your
18 permission, I would like to go to Mr. Henning now, if I may.

19 SENATOR MELLO: Perhaps I should also indicate that
20 the past practice of the Rules Committee, at least since I've
21 been on here, the difference between an appointment at the
22 pleasure of the appointment authority, in this case the
23 Governor, or one that goes beyond that.

24 SENATOR CRAVEN: Yes.

25 SENATOR MELLO: Victor Veysey had a term for the
26 term of the Governor. He was rejected by this Committee.

27 SENATOR CRAVEN: Right.
28

1 SENATOR MELLO: Carol Hallett, in the same
2 category.

3 SENATOR CRAVEN: Right.

4 SENATOR MELLO: And others.

5 I think that proves very definitely that our
6 Committee is not differentiating between term appointments
7 coinciding with the Governor's term, or terms that go beyond
8 his term.

9 SENATOR CRAVEN: That's right.

10 SENATOR MELLO: Rather, I think we've evaluated
11 each nominee based on their own qualifications, and their
12 performance on the job, and I hope we continue to do that.

13 SENATOR CRAVEN: Well, that's a good reflection
14 upon all of you, my colleagues.

15 Mr. Henning.

16 MR. HENNING: Mr. Chairman, Members of the
17 Committee, Jack Henning, California Labor Federation.

18 The Federation is opposed to the appointment on the
19 basis of performance.

20 The appeals body is the last resort for people who
21 are jobless. We're not talking about people who are
22 affluent. We're not talking about people in the middle class
23 or the well-employed. We're talking, generally speaking, to
24 a low-income group, and to workers in desperate need of
25 economic assistance while they are unemployed. And we have
26 millions of them in California.

27 And so, historically, we've always taken a very
28

1 close interest in the way the Board members vote. We don't
2 apologize for that. If they're voting against the
3 unemployed, we don't appreciate that. If they're voting that
4 other way, it's usually at the cry and response to the
5 employers.

6 Now, since Mr. Meese has been on the Board, there's
7 been a drastic drop in the number of favorable decisions by
8 the Board. He had company, people who thought the same way.
9 That I agree, but we don't want this to go on.

10 Before he came on, the jobless worker who appealed
11 decisions was successful in 15-20 percent of the cases. That
12 doesn't indicate a reckless regard of the facts in previous
13 days. That's still not a very high percentage in our mind.

14 But after his appointment, the figure dropped to
15 11.87 in 1986, and continued to decline to a low of 8.7 in
16 1989.

17 And I'll be frank. We think that it's time for a
18 change; that we should have Board members on who are
19 sympathetic with the purpose of the system. If the system is
20 just going to confirm the employer position, then it's not
21 doing its job.

22 And we say there's been a partisan anti-worker
23 position by the Board over these past several years, and we
24 have a duty to speak for those who are member who are
25 jobless, but also for those who are not members of ours that
26 are jobless.

27 And so, we are in opposition.
28

1 SENATOR CRAVEN: Thank you very much, Mr. Henning.

2 Does anyone have any questions of Mr. Henning?

3 Senator Petris.

4 SENATOR PETRIS: One question.

5 You said he had company. I don't know the record.

6 Is this consistent of all the current members?

7 MR. HENNING: It's a tendency toward them,
8 reflecting their political philosophy, as we see it.

9 SENATOR PETRIS: Do you see this as contrary to the
10 intent of the statute?

11 MR. HENNING: I certainly do.

12 Why have the Board if it's going to reject? And
13 just look at the figures: rejecting roughly 91 percent of
14 the appeals.

15 We want to see a change.

16 SENATOR PETRIS: Thank you.

17 SENATOR CRAVEN: Thank you very much, sir.

18 Does anyone else wish to testify? There appears to
19 be none.

20 What is your pleasure, gentlemen?

21 SENATOR PETRIS: I think Mr. Meese ought to have a
22 chance to respond.

23 SENATOR CRAVEN: Very well.

24 SENATOR PETRIS: And I'll probably renew my request
25 that it go over.

26 MR. MEESE: Thank you very much, Senator Petris and
27 Mr. Chairman.
28

1 I would say this. Over the past few years, with
2 the cost of unemployment -- first of all, unemployment has
3 been relatively low in California over the past few years,
4 and employment has been quite high.

5 We've seen a direct proportional increase in
6 employer representation at our hearings. We've had more
7 company representatives appear at our hearings, and so forth.

8 On the contrary, labor has not been attending our
9 hearings. Labor has not seemed to be participating in the
10 activities of the claimants that come before us.

11 Labor as a whole, and in particular, they were
12 invited to a forum that is put on by our administrative law
13 judges. No one from labor appeared at that forum to learn
14 how we work, what we do, what our thinking is, and so forth.
15 A great many of the employers' groups did attend.

16 So, I don't know where he gets his figures. They
17 are probably true, but I think it's more employer involvement
18 and the lack of labor participation in our hearings.

19 We try to make sure that all the claimants get a
20 fair shake. We look at the record of the hearing to
21 determine that our ALJs out in the field have taken every
22 step, just like a judge in court, to make sure the defendant
23 has all his rights taken care of and gets to take advantage
24 of all the avenues available to him.

25 And we sometimes send them back if we feel that the
26 claimant has not had a fair shake.

27 I don't know where -- we take each individual case.
28

1 We don't lump them all together. Each case that comes before
2 us is an individual case. We apply the law as we see it as
3 it affects that particular case. We don't lump them into
4 claimants, and so forth.

5 SENATOR CRAVEN: But I get the impression, based on
6 what you have said, that advocacy plays no small part in the
7 decision rendered.

8 MR. MEESE: Well, we try to ensure against that. I
9 would say that the employers are more cognizant of the cost
10 of the unemployment program to them. Labor has kind of
11 dropped out of the picture, as it were, in the unemployment
12 insurance field.

13 SENATOR CRAVEN: Would I be right in assuming that
14 what you are saying, in a somewhat subliminal way, is the
15 fact that if labor representation had been present, perhaps
16 they would have scored a higher percentage in the workers'
17 quest?

18 MR. MEESE: Well, I'm not sure of that either,
19 because the administrative law judges in the field take
20 particular care to make sure that the rights of the claimant
21 are protected, and so do we on the Board.

22 Although there may be some cases, and, you know, I
23 feel badly for the people who are out of work and need the
24 money. A lot of cases that come before us, the people need
25 the money, but unemployment insurance is not where they
26 should get it. They were fired for good cause, or whatever,
27 but then they do not come under our laws for protection in
28

1 that area. They may have to get it from welfare.

2 But I think if we want to keep the integrity of the
3 unemployment insurance program, which is a good program, we
4 have to make sure that we follow the law as it's written.

5 SENATOR PETRIS: I don't know much about the
6 procedure at the appellate level. Do you have hearings with
7 counsel on both sides?

8 MR. MEESE: No, we do not have hearings.

9 SENATOR PETRIS: You review the record privately?

10 MR. MEESE: We review the transcript.

11 Before it gets to us, the claimant has to appeal.
12 He's either been turned down by the Department or by the
13 administrative law judge in the field. And then, if he
14 appeals, we either grant his appeal or decline it.

15 SENATOR PETRIS: So where does the advocacy role
16 fit in?

17 MR. MEESE: At the administrative law judge area;
18 after he's either --

19 SENATOR PETRIS: But there's counsel in those
20 hearings; isn't there?

21 MR. MEESE: Sometimes, very seldom, however.

22 Many times it's just the employer or the employer's
23 representative and the claimant with the administrative law
24 judge.

25 SENATOR PETRIS: And that's all?

26 MR. MEESE: That's, I would say, 90 percent of the
27 cases.
28

1 SENATOR PETRIS: No counsel on either side?

2 MR. MEESE: That's correct. In some cases they do
3 have counsel, but that's the vast minority.

4 SENATOR PETRIS: So, how is this advocacy
5 expressed? The employer, he comes in and resists the claim,
6 I assume?

7 MR. MEESE: They resist the claim. They also hire
8 -- have representatives, professional employer reps who are
9 very familiar with the unemployment insurance laws that come
10 to the hearings with them in many cases.

11 SENATOR PETRIS: And are you saying that, at that
12 level, there's no one from labor to represent --

13 MR. MEESE: Generally that's very true. It's up to
14 the administrative law judge to make sure that his rights are
15 protected. And I would say he does do that.

16 SENATOR PETRIS: What percentage of those employees
17 that go through the system belong to a trade union?

18 MR. MEESE: I would say -- I don't know. I would
19 guess 20-25 percent.

20 SENATOR PETRIS: That would reflect the statewide
21 level, I guess. That's about what it is now.

22 MR. MEESE: I would say that's probably right,
23 then.

24 SENATOR PETRIS: So, the overwhelming majority
25 wouldn't have a union to turn to if they wanted some help in
26 those hearings.

27 Where are they going to go to get some help?
28

1 MR. MEESE: As I say, I think the administrative
2 law judge is the person that helps them, the individual, out.

3 SENATOR PETRIS: Yes, but he's the judge. He has
4 to make the decision.

5 You see, you were commenting on the lack of
6 advocacy.

7 MR. MEESE: In the cases where the union could or
8 would be involved, yes.

9 SENATOR PETRIS: Are you saying that, even when
10 there is a union, they don't send any help?

11 MR. MEESE: That's correct, in the majority of the
12 cases.

13 SENATOR PETRIS: So, they're just out there by
14 themselves.

15 MR. MEESE: Correct, most of the time.
16 Occasionally you'll see one, but very seldom.

17 SENATOR PETRIS: Thank you.

18 SENATOR CRAVEN: Thank you, Senator Petris.

19 Senator Mello.

20 SENATOR MELLO: Yes, I'd like to review some of
21 these charts. I don't know if you've seen this before. It
22 came from your Department. I think other Members have these
23 in the file.

24 What this shows as the source is the Unemployment
25 Insurance Appeals Board, and the Senate Committee on
26 Industrial Relations put this out recently. It sort of shows
27 that's happened since your appointment in 1986.
28

1 The first one, this bar graph, vertical bar graph,
2 shows that the number of decisions in the worker's favor
3 between 1980 and '89, especially from '86 on, have dropped
4 considerably, which means -- I don't know if, on a
5 seven-person Board, whether your vote has that much weight --
6 but it shows that, I think, the appointees to that Board have
7 tipped the scales in favor of decisions that really are
8 working against the worker's interests. That's one chart.

9 The second chart also is two lines. The solid
10 colored line shows decisions made in favor of the worker, the
11 employee, and the dotted line's the one made in favor of the
12 employer. And it just shows, there again, the straight line
13 in favor of the employee has dropped considerably since 1986,
14 which is the date of your appointment. And the dotted line,
15 made in favor of the employer, has gone up.

16 I just wondered whether you'd comment on why this
17 is happening?

18 MR. MEESE: It looks to me like the employer line
19 generally stays about the same. There are a few dips.

20 SENATOR MELLO: From my eyesight -- my eyesight's
21 getting a little weak -- but it shows the curve has gone up a
22 little bit there since '86.

23 MR. MEESE: In '82 it started -- if I'm looking at
24 the right one. It's the dotted line?

25 SENATOR MELLO: Yes, the dotted line is the
26 employers.

27 MR. MEESE: In '89, it's just slightly above 18
28

1 percent also. So, there was a dip in there.

2 SENATOR MELLO: Yes, there was a dip from '86 on.
3 It's starting to go up.

4 The decisions made, the dotted line represents the
5 decisions made in favor of the employer, and they're
6 increasing.

7 MR. MEESE: Oh, I see, from '86 on, yes.

8 SENATOR MELLO: The straight line is the one that's
9 the employee's curve. It dropped down from a high of about
10 19 percent in favor of the employee down to about $8\frac{1}{2}$ percent.

11 MR. MEESE: I can only guess that part of the line
12 indicates that, as the economy improved, and more people went
13 to work, it appears that the workers -- the occasions in the
14 worker's favor went down. Now, whether or not that's because
15 the EDD had more time and more opportunity to look into the
16 cases --

17 SENATOR MELLO: Do you actually make the decision
18 based on the economy?

19 MR. MEESE: No, no. We take each individual case
20 as it comes along and apply the law as it is before us, as
21 it's written.

22 SENATOR MELLO: So, at any rate, if we do put this
23 over again, I'd like at the next hearing to see your
24 response, after you have a chance to study these --

25 MR. MEESE: May I say this, Senator Mello.

26 The way the panels work, each case is given to two
27 members of the panel, so that -- and it's all done by
28

1 computer. So, there's a possibility of 42 separate different
2 panels that these cases could go to.

3 SENATOR MELLO: That would be good information.

4 The other question I wanted to ask you was
5 something you just said to Senator Petris about trying to
6 protect the integrity of the unemployment insurance program,
7 and apparently people not being able to gain benefits from
8 that, you said they should go on to welfare.

9 I've been an employer all these years, and
10 employers and employees pay into the unemployment insurance
11 fund. And if they're eligible, if they're laid off work and
12 not being fired, I just hate to force people on to welfare.
13 I mean, that's about as degrading a thing as you could find
14 in our society.

15 MR. MEESE: Did I understand you to say that the
16 employees contribute?

17 SENATOR MELLO: Well, it's paid for by -- well,
18 they pay for disability, not for unemployment.

19 MR. MEESE: That's what I say.

20 SENATOR MELLO: Regardless of who pays for it, it's
21 there to protect the worker.

22 MR. MEESE: That's right. I'm not advocating that
23 people go on welfare.

24 But if we're going to maintain the integrity of the
25 unemployment insurance system, we have to obey the law as
26 it's been set down by the Legislature. If a person is fired
27 for misconduct or quits without good cause, we are not
28

1 allowed to pay them.

2 SENATOR MELLO: But your statement was, in
3 protecting the integrity, it appeared that you were trying to
4 shift people on to welfare rather than give them their
5 benefits.

6 MR. MEESE: My intent, Senator, was to say that if
7 they do not qualify under the law for unemployment insurance,
8 then perhaps their only remedy would be to go on welfare.

9 SENATOR MELLO: Yes.

10 Well, you haven't had a chance to study this here,
11 but to me, my first analysis of this, the law remained fairly
12 constant here, I think, on a straight line. I'm talking
13 about the law. The law probably hasn't changed in the last
14 ten years.

15 MR. MEESE: That's probably correct.

16 SENATOR MELLO: Yet this line varies all over the
17 place because decisions made by the Board, in the
18 interpretation of it, has gone up and down based on
19 philosophical reasons.

20 MR. MEESE: Well, my contention would be that, as
21 far as I am concerned, I follow the law and the intent of the
22 Legislature. And I believe I apply it as the Legislature has
23 said, liberally, to help the worker. But where there's a
24 definite case where a worker has been fired for misconduct,
25 or leaves without good cause, then I would say it's against
26 my oath of office to find that he's eligible.

27 SENATOR MELLO: Are you saying that more people
28

1 have been fired during the time that you served on the
2 Commission than before?

3 MR. MEESE: I would not say that. I'm not sure --

4 SENATOR MELLO: I've been almost all my life an
5 employer, but what I'm concerned about here is, laws that
6 were developed by the Legislature. Unemployment insurance is
7 the program to provide benefits to unemployed workers. The
8 ALRB is a program to protect farmworkers. And if you look at
9 the preamble, it says definitely this is what the goals are.
10 Workers' Compensation Insurance Program is there for the
11 injured workers, and so forth and so on.

12 But it seems like if the criteria goes down
13 drastically by decisions made by your Board, either more
14 people are being fired, or the interpretation of the law is
15 treated differently in these cases. And I don't know what
16 the answer is.

17 The reason I bring it up, I would like to know at a
18 future hearing what your comments might be on the two graphs.

19 MR. MEESE: I was going to say, my philosophy is,
20 if the person is unemployed through no fault of his own, then
21 he's eligible for unemployment insurance. If he is fired
22 with good cause, if he leaves without good cause, then he is
23 not eligible, and he has to look for some other remedy.

24 SENATOR MELLO: There've been a lot of incidents.
25 We had a very serious frozen food strike in Watsonville a
26 couple of years ago, and the question of many of the workers.
27 While they were on strike, of course, they were denied
28

1 unemployment insurance, I guess, by law, but they were even
2 denied social welfare benefits.

3 You say shift them over to welfare, but they
4 couldn't' even draw welfare.

5 MR. MEESE: No, and please don't misunderstand me.

6 SENATOR MELLO: That's not your Department, but I'm
7 just saying --

8 MR. MEESE: No, I don't mean to shift them over to
9 welfare.

10 It's just that my oath requires me not to give them
11 unemployment insurance if they do not qualify, and they may
12 have to look elsewhere for remedy. I'm not advocating
13 anybody go on welfare.

14 SENATOR MELLO: There's a lot of hungry people out
15 there, and the number of the homeless ranks are growing. I
16 used to think at one time they were all drug addicts and
17 alcoholics, until I looked at it, and I found that one-third
18 of the homeless are children, almost another third are women.
19 And of the remaining factor, very few are alcoholics and drug
20 addicts. A lot of them are just displaced persons from our
21 society that are unattached from jobs, from housing. Some of
22 them are still working, but they just lack the amount to
23 survive.

24 I don't know why this is happening. President Bush
25 said we're going to be a kinder and gentler nation, and I
26 hoped that would come about, but I think the way we're going
27 with health services being unavailable, and people being
28

1 disenfranchised from governmental services is growing, not
2 diminishing. I just don't know what direction we're heading.

3 MR. MEESE: I would say, we look at each case, as I
4 said before, individually. And I don't know what the make-up
5 of all these cases are that are here.

6 SENATOR MELLO: Well, like I say, this is not Henry
7 Mello's idea. This came from the California Unemployment
8 Insurance Appeals Board. These are your own statistics. But
9 it was compiled by the Senate Committee on Industrial
10 Relations and put out in May of 1990, this month we're now
11 in, so they're fairly recent. So, I have every reason to
12 believe that they represent the facts as you put them out.

13 One other question I want to raise is about the
14 drug testing. You've ruled that employers may terminate
15 employment if a test shows positive use of drugs.

16 I want to make it clear that I'm just opposed to
17 all use of drugs, and I have supported and I think I still
18 do, it not being used in professional sports and other
19 industries. I think the employer has the right to make sure
20 that people have the ability to perform.

21 But the only question I'm asking you is, was this
22 decision made on the basis of your own internal regulation,
23 or was it part of State law or statute that you were able to
24 come to that decision?

25 MR. MEESE: This was a particular case that came
26 before us, and we decided under the circumstances of this
27 particular case that the person -- that the employer was
28

1 entitled to test this person for drugs.

2 I believe the latest one we had was, the employee
3 had signed a consent as a condition of employment that he
4 would agree to be tested, and that he was tested and tested
5 positive.

6 SENATOR MELLO: But in your case, it was not a
7 question of whether they should be hired or not. It was a
8 question of whether they should get unemployment benefits,
9 and I think your Board voted, five to two, to deny them
10 benefits based on the drug tests.

11 MR. MEESE: That he violated the condition of
12 employment, yes.

13 SENATOR MELLO: Is that in statute or is that a
14 regulation?

15 MR. MEESE: That's a precedent decision that the
16 Board passed.

17 SENATOR MELLO: Pardon?

18 MR. MEESE: It is not in statute. It's a precedent
19 decision that the Board passed.

20 SENATOR MELLO: A precedent decision from --

21 MR. MEESE: Of the Board which binds the
22 administrative law judges in the field.

23 SENATOR MELLO: So, your Board then determined that
24 that would be a policy you adopted?

25 MR. MEESE: That's correct, that under the
26 circumstances of that particular case, the employer had the
27 right to give the blood test in that case.
28

1 SENATOR MELLO: That's all the questions I have.

2 SENATOR CRAVEN: Thank you.

3 Senator Petris.

4 SENATOR PETRIS: May I go back?

5 An extension of that drug testing thing, that's
6 been a sore spot because there's some pretty good evidence
7 that those tests aren't always reliable.

8 MR. MEESE: That's correct.

9 SENATOR PETRIS: Some people could be pretty
10 severely discredited and damaged by an erroneous test.

11 There's another aspect too the test, which was kind
12 of dramatized by a recent U.S. Supreme Court decision, a
13 case, I think, coming out of Oregon, where the Native
14 American Indians, who use peyote only during a religious
15 ritual, they were convicted. And the U.S. Supreme Court
16 ruled that freedom of religion does not extend to their right
17 to use a hallucinogenic substance.

18 Now, suppose we have a Native American Indian here
19 in California who is fired because of using that in a ritual.
20 What would the Board do?

21 MR. MEESE: I don't know what the Board would do.
22 You'd have to find a nexus as to when or where he used it.
23 If he appeared at work under the influence of that drug, I
24 would assume that would be misconduct. If he used it in a
25 religious ceremony away from the work site and two days later
26 and was fined, there would be no problem as far as I'm
27 concerned.
28

1 SENATOR PETRIS: That's the way the issue would be
2 framed? That's the way you would look at it?

3 MR. MEESE: The way I would look at it, yes.

4 SENATOR PETRIS: You know, I had a bill on that
5 following a conviction of some Native Americans for that
6 reason quite a few years ago. And I had a bill that would
7 overturn that decision by recognizing their right.

8 I felt, you know, we took everything away from the
9 Native Americans. We ought to at least let them practice
10 their religion. And with that decision, and that prosecution
11 and conviction upheld by a California appellate court, I
12 thought that was pretty bad.

13 I would be interested if a case like that were to
14 arise just how the test would be applied. Some people are
15 tempted to say, well, he's a user, period, he's out. But the
16 issue would be narrowly confined to how it affects his work.

17 MR. MEESE: Yes.

18 The other precedent we have is where the person
19 appeared under the influence at work.

20 SENATOR PETRIS: Yes, that's pretty clear, meaning
21 it would impair that person's function to do the job.

22 MR. MEESE: As I recall, he was in a dangerous
23 occupation with a steel hammer, or something.

24 SENATOR PETRIS: I just find some of these
25 developments kind of disturbing. They were here before the
26 rest of us were, and they were practicing that religion for a
27 long, long period of time.
28

1 Well, I guess we'll have to wait until we get to
2 that bridge. Hopefully, we'll never have to cross it.

3 Thank you

4 MR. MEESE: Thank you.

5 SENATOR CRAVEN: Senator Petris, you've now heard
6 considerable comment from Mr. Meese, and I wonder if you're
7 ready to approach what you think is the appropriate route.

8 SENATOR PETRIS: I'm glad we had the hearing
9 instead of going all over this again.

10 I would request that we defer until we get a
11 clarification, as the Chair indicated, some time after next
12 week and before the recess. Hopefully early rather than
13 late.

14 SENATOR CRAVEN: Yes, the earlier the better.

15 SENATOR PETRIS: In fairness to which ever nominees
16 might come up in that category.

17 SENATOR CRAVEN: Very well.

18 Is there any objection from any of the Members?
19 There appears to be none.

20 Is there anyone who came here to testify on behalf
21 or in opposition to Mr. Meese that we should hear from?
22 There appears to be none.

23 Well, what we will do, Mr. Meese, is set the item
24 in abeyance, if you will, to get the information which has
25 been requested by Senator Petris as well as the Members of
26 the Rules Committee. Once that's in our hands, then we will
27 come back and we will have the opportunity to get together
28

1 again.

2 Thank you very much.

3 MR. MEESE: Thank you very much.

4 [Thereupon the Rules Committee
5 acted upon legislative items
6 on the agenda.]

7 SENATOR CRAVEN: Let's go back to our Governor's
8 Appointees. This is the last one, and obviously, we have
9 saved the best for last. This is Harold R. Walt, Director of
10 Forestry and Fire Protection.

11 Mr. Walt, would you come forward and give us a
12 little background as to why you feel you're qualified for
13 this very important post.

14 MR. WALT: Mr. Chairman and Members, Senator Keene,
15 Committee staff.

16 I have -- I was graduated in forestry from the
17 University of California at Berkeley. My wife and I owned
18 and operated our tree farm for about 14 years.

19 For the past seven years, I have served as Chairman
20 of the California Board of Forestry. In 1986, I was elected
21 California Forester of the Year. I've served recently as
22 visiting professor of forest policy at Berkeley.

23 Nationally, I'm involved with the American Forestry
24 Association as a member of the Board, and as a member of the
25 Society for American Foresters.

26 I've served at the Governor's pleasure for the
27 last three months, March 1, and I ask for your favorable
28

1 consideration to continue for the Governor's term.

2 SENATOR CRAVEN: Thank you very much, sir.

3 Is there anyone in the audience who wishes to
4 speak for or in opposition to Mr. Walt's appointment? Yes,
5 sir.

6 MR. BYWATER: Mr. Chairman, Committee Members,
7 Senator Keene, I'm Ron Bywater, President of the California
8 Department of Forestry Employees Association.

9 I did communicate with the Committee by letter our
10 support, but I wanted to personally appear and indicate our
11 desire to continue the working relationship that we have with
12 Mr. Walt. Mr. Walt's shown a desire to maintain an
13 atmosphere of open communications with the Employee
14 Association, and it's certainly refreshing to be able to work
15 under those condition. It's a change from what we're used
16 to.

17 We don't always agree, and I don't expect that we
18 will. We have, however, agreed to disagree. And to do that
19 without interfering with our ability to sit down and discuss
20 concerns that each has with the other.

21 We're not cooperating in union management projects
22 to the benefit of both the employee and the Department and
23 the State of California and the taxpayers.

24 It's been a pleasure working with Mr. Walt these
25 past three months, and as President of the Employee
26 Association, representing the bulk of the employees in the
27 Department, we urge your support for confirmation of
28

1 Mr. Walt.

2 SENATOR CRAVEN: Thank you very much, President
3 Bywater. We appreciate your testimony.

4 Anyone else wish to make comment?

5 MR. BURNS: Mr. Chairman, Members, Donald Burns,
6 representing the California Licensed Foresters Association.

7 During Mr. Walt's tenure as Chairman of the Board
8 of Forestry, there have been enormous numbers of issues
9 which have come before that Board. We have always been
10 impressed with the ability of the Director designate to bring
11 all parties and interests together and reach amicable
12 solutions, every party giving in, to have something necessary
13 that would work and be fair to the people of California.

14 So, we do support.

15 SENATOR CRAVEN: Thank you very much, Mr. Burns.

16 Anyone else wish to comment? There appears to be
17 none.

18 Yes, Senator Keene, who is very much interested in
19 forestry.

20 SENATOR KEENE: Thank you very much.

21 I want to thank the Rules Committee for moving up
22 the scheduling of this particular item. I think it's
23 exceptionally important because of the difficulties that
24 we're having in the forests of the North Coast and other
25 forested areas in California.

26 I think it's crucial that CDF have a Director who's
27 vested with the full powers to direct personnel and respond
28

1 to emergency situations.

2 In gratitude for the Committee's moving this item
3 up, I'm going to omit the long and lavish list of praise that
4 I was going to heap on Mr. Walt, and simply say that he's
5 exceptionally qualified, in my judgment, having known him
6 since 1983 as Chairman of the Board of Forestry, perhaps
7 earlier, I don't recall.

8 But also that he is extraordinarily fair-minded,
9 and I think that that is something that is going to be
10 needed, particularly with the delicate situation that is
11 arising.

12 So, having said that, I would urge on that basis
13 the Committee to approve his recommendation.

14 SENATOR CRAVEN: Very good.

15 And also, since it's 46 years ago since he
16 graduated from the University of California, he's still
17 wearing their tie.

18 [Laughter.]

19 SENATOR CRAVEN: Do any of the Members of the
20 Rules Committee have any questions of Mr. Walt? There
21 appears to be none.

22 Senator Mello.

23 SENATOR MELLO: I've been waiting for my colleague
24 here to make the nomination, but I just told Senator Beverly
25 that I bet I know Mr. Walt better than you do, and his wife
26 Kathleen. We've been friends.

27 But not only that, I think that I would like to get
28

1 into the record just briefly some of his background, which
2 includes not only a dean of the University of San Francisco,
3 but he was on the Board of Directors of the Federal Home Loan
4 Bank of San Francisco, visiting scholar Federal Home Loan
5 Bank, Chairman of the Board of Fidelity Savings and Loan,
6 Advisory Committee on Federal Home Loan Mortgage Corporation,
7 with Freddy Mac, Board of Directors of Eureka Federal Savings
8 and Loan, Board of Directors of Homestead Financial
9 Corporation. And he also served in many capacities helping
10 to resolve, as the arbitrator.

11 I got to know him through a good friend of mine in
12 Watsonville. We were friends for years and years, and it's
13 really been a pleasure dealing with him.

14 Being Chairman of the Board, this may seem like a
15 step down, but I just wish he'd have been Director of
16 Forestry during the entire eight years of this
17 administration. I think he's going to do an outstanding job
18 in the remaining term.

19 So, I'm happy to support you.

20 SENATOR CRAVEN: Very good.

21 SENATOR BEVERLY: Move the approval of the
22 nomination.

23 SENATOR CRAVEN: Senator Beverly moves. Would you
24 call the roll, please.

25 SECRETARY WEBB: Senator Beverly.

26 SENATOR BEVERLY: Aye.

27 SECRETARY WEBB: Senator Mello.
28

1 SENATOR MELLO: Aye.

2 SECRETARY WEBB: Senator Petris. Senator Craven.

3 SENATOR CRAVEN: Aye.

4 SECRETARY WEBB: Senator Roberti.

5 SENATOR CRAVEN: Three to zero; the item is out.

6 We'll just keep the roll open and pick up Senator
7 Petris, Mr. Walt, when he returns from committee where he is
8 today.

9 Just in passing I will tell you that when I was a
10 youngster in the Marine Corps, which is almost 50 years ago,
11 my commanding general was a graduate of the Yale School of
12 Forestry, which I had never heard of in those days and
13 haven't heard of since, I might add. Just a point in
14 passing.

15 Nice to have you with us. You are, obviously,
16 preeminently qualified.

17 MR. WALT: Thank you, Senator.

18 SENATOR CRAVEN: Open the roll on Mr. Walt's
19 confirmation for the vote of Senator Petris.

20 SECRETARY WEBB: Senator Petris.

21 SENATOR PETRIS: Petris aye.

22 SENATOR CRAVEN: So, it's four to zero, Senator
23 Petris has just indicated.

24 [Thereupon this portion of the
25 Senate Rules Committee hearing
26 was terminated at approximately
27 3:35 P.M.]
28

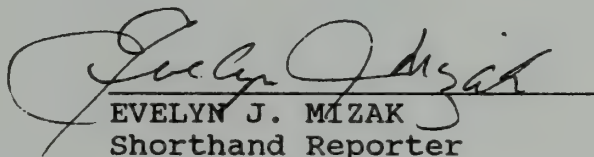
CERTIFICATE OF SHORTHAND REPORTER

I, EVELYN J. MIZAK, a Shorthand Reporter of the State of California, do hereby certify:

That I am a disinterested person herein; that the foregoing Senate Rules Committee hearing was reported verbatim in shorthand by me, Evelyn Mizak, and thereafter transcribed into typewriting.

I further certify that I am not of counsel or attorney for any of the parties to said hearing, nor in any way interested in the outcome of said hearing.

IN WITNESS WHEREOF, I have hereunto set my hand this 31st day of May, 1990.


EVELYN J. MIZAK
Shorthand Reporter

500
9
190
o. 18

HEARING
SENATE RULES COMMITTEE
STATE OF CALIFORNIA



DOCUMENTS DEPT.

JUL 3 1990

SAN FRANCISCO
PUBLIC LIBRARY

STATE CAPITOL
ROOM 113
SACRAMENTO, CALIFORNIA

WEDNESDAY, JUNE, 6, 1990
3:07 P.M.

Additional copies of this publication may be purchased for \$7.00 per copy from:

Joint Publications
State Capitol, Box 942849
Sacramento, CA 94249-0001

Please add California sales tax. Make checks payable to STATE OF CALIFORNIA.

1 HEARING

2 SENATE RULES COMMITTEE

3 STATE OF CALIFORNIA

4
5
6
7
8
9
10 STATE CAPITOL

11 ROOM 113

12 SACRAMENTO, CALIFORNIA

13
14
15
16 WEDNESDAY, JUNE 6, 1990

17 3:07 P.M.

18
19
20
21
22
23
24 Reported by:

25
26
27 Evelyn J. Mizak
28 Shorthand Reporter

APPEARANCES

MEMBERS PRESENT

SENATOR DAVID ROBERTI, Chairman

SENATOR ROBERT BEVERLY

SENATOR HENRY MELLO

SENATOR NICHOLAS PETRIS

MEMBERS ABSENT

SENATOR WILLIAM CRAVEN, Vice Chairman

STAFF PRESENT

CLIFF BERG, Executive Officer

PAT WEBB, Committee Secretary

RICK ROLLENS, Consultant on Bill Referrals

NANCY MICHEL, Consultant on Governor's Appointments

ALSO PRESENT

ROBERT D. BRIGGS, Superintendent
Chuckawalla Valley State Prison

LARRY AUBERT, JR., Former Employee
Folsom State Prison

GAVIN MCHUGH, Legislative Advocate
California Correctional Peace Officers Association

ANTONIO A. RAYA, Vice President
Northern Chapter
Chicano Correctional Workers Association

ROBERT G. BORG, Warden
Folsom State Prison

LONNIE M. CARLSON, Chief Deputy Director
Department of Social Services

DONALD R. IRWIN, Director
Office of Emergency Services

JEROME F. LIPP, Member
California Transportation Commission

PAUL ROBERT NEEL, State Architect

APPEARANCESMEMBERS PRESENT

SENATOR DAVID ROBERTI, Chairman

SENATOR ROBERT BEVERLY

SENATOR HENRY MELLO

SENATOR NICHOLAS PETRIS

MEMBERS ABSENT

SENATOR WILLIAM CRAVEN, Vice Chairman

STAFF PRESENT

CLIFF BERG, Executive Officer

PAT WEBB, Committee Secretary

RICK ROLLENS, Consultant on Bill Referrals

NANCY MICHEL, Consultant on Governor's Appointments

ALSO PRESENT

ROBERT D. BRIGGS, Superintendent
Chuckawalla Valley State Prison

LARRY AUBERT, JR., Former Employee
Folsom State Prison

GAVIN MCHUGH, Legislative Advocate
California Correctional Peace Officers Association

ANTONIO A. RAYA, Vice President
Northern Chapter
Chicano Correctional Workers Association

ROBERT G. BORG, Warden
Folsom State Prison

LONNIE M. CARLSON, Chief Deputy Director
Department of Social Services

DONALD R. IRWIN, Director
Office of Emergency Services

JEROME F. LIPP, Member
California Transportation Commission

PAUL ROBERT NEEL, State Architect

INDEXPage

Proceedings

1

Governor's Appointees:ROBERT D. BRIGGS, Superintendent
Chuckawalla Valley State Prison

1

Witness in Opposition:LARRY AUBERT, Former Employee
Folsom State Prison

2

Letter from Officer MICHAEL CORCORAN

2

Wrongful Termination

8

Violations of Due Process

8

Second Termination

9

DENNINGER Memo

9

State Personnel Board

11

Taped Interview with WARDEN BORG

12

Charges for Termination

13

Nonexistent Rule Broken

14

Lack of Checks & Balances

15

Director's Broken Promise

16

Response by MR. BRIGGS

17

Questions by CHAIRMAN ROBERTI re:

Knowledge of Accusations

17

Reason for Rehire

18

Acquittal of Subordinate

18

Rebuttal by MR. AUBERT

18

Rebuttal by MR. BRIGGS

19

INDEX (CONTINUED)

Questions by SENATOR MELLO re:

Refusal to Allow Employees to Talk
to Legislators 20

Response by MR. AUBERT 21

Basis of Filed Grievance 21

Response by MS. MICHEL 22

Resolution of Grievance 22

Implementation of Arts in Corrections 23

Number of Inmates Involved 24

Impact of Heat on Facility 25

Deficiencies 26

Personal Responsibility Curriculumm 29

Necessities to Improve Facility 29

Witnesses in Support:

GAVIN MCHUGH, Legislative Advocate
California Correctional Peace Offices Association 30

Resolution of Grievance 30

Position on Confirmation 30

TONY RAYA, Northern Vice President
Chicano Correctional Workers Association 31

Questions by SENATOR PETRIS re:

Statement Regarding Adverse Action 33

Grievance Author's Lack of Direct Knowledge 34

Request by SENATOR PETRIS to Bring in Author of
Grievance and Signees 35

Questions by SENATOR MELLO re:

Employment Status of Signees 36

Questions by SENATOR PETRIS re:

Programs on Substance Abuse 37

INDEX (CONTINUED)

1	Success Rate	39
2	Questions of WARDEN BORG by SENATOR PETRIS re:	
3	Petition, Grievance and Appeal	39
4	Final Disposition	40
5	Background	41
6	Briggs' Meeting with Staff	41
7	First Meeting with Warden	42
8	Clarification of Issues and	
9	Apology on Behalf of Administration	43
10	Second Meeting with Briggs	43
11	Resolution of Problem	44
12	Status of Grievance	44
13	Position on MR. BRIGGS' Confirmation	44
14	Mexican Mafia vs. Mexican Connection	45
15	Questions of WARDEN BORG by SENATOR MELLO re:	
16	Reason for Apology	46
17	Statement by SENATOR ROBERTI re:	
18	Hold Over Confirmation for One Week	52
19	Response by SENATOR PETRIS re:	
20	Request of Letter from Author	52
21	Discussion	52
22	Clarification by Union Representative,	
23	GAVIN MCHUGH re: Grievance	53
24	Offer to Bring Forth MR. WHEATON, Author	54
25	Statement by CHAIRMAN ROBERTI re:	
26	Holding Confirmation on Floor	55
27	Discussion	55
28		

INDEX (CONTINUED)

Statement by SENATOR PETRIS re:

Complaints of MR. AUBERT and
MR. CORCORAN 56

Holding Confirmation in Committee 56

Committee Action 57

LONNIE M. CARLSON, Chief Deputy Director
Department of Social Services 57

Questions by SENATOR MELLO re:

Repeal of COLAs 58

Recommendation to Governor 59

Lack of Funding for COLAs in Budget 61

Questions by SENATOR PETRIS re:

High Salaries for Administrators in
Other Departments 63

Motion 64

Committee Action 64

DONALD R. IRWIN, Director
Office of Emergency Services 64

Questions by SENATOR MELLO re:

Problems with FEMA 66

Low FEMA Estimates on Repairs 67

Role of OES and FEMA 68

Status of Coalinga and Whittier Claims 69

Length of Time to Settle Claims 70

Request by SENATOR MELLO to Hold Appointment
on Senate Floor 71

Discussion 72

Decision 73

Motion 74

Committee Action 74

INDEX (CONTINUED)

Statement by SENATOR PETRIS re:

FEMA's Assessment of State Building
in Oakland 74

JEROME F. LIPP, Member
California Transportation Commission 75

Questions by SENATOR PETRIS re:

Length of Term 76

Conflict of Interest Issues with
Other Commissioners 76

Balance of Commission -- Pro Developers 77

Motion 78

Committee Action 78

PAUL ROBERT NEEL
State Architect 78

Questions by SENATOR PETRIS re:

Information on State Building in Oakland 81

Similar Problems in San Francisco 82

Plan for New State Building in Oakland 82

Motion 83

Committee Action 83

Termination of Proceedings 83

Certificate of Reporter 84

1
2 P-R-O-C-E-E-D-I-N-G-S

3 --oo0oo--

4 CHAIRMAN ROBERTI: Governor's Appointees appearing
5 today, Robert D. Briggs, Superintendent of the Chuckawalla
6 Valley State Prison.

7 Mr. Briggs, we'll ask you what we ask all the
8 Governor's Appointees, and that is why you feel you're qualified
9 to assume this position.

10 MR. BRIGGS: I believe I'm qualified due to the
11 experience, starting as a Correctional Officer, working through
12 the ranks, Sergeant, Lieutenant, into management positions at
13 various facilities, working the field as a Special Agent for the
14 Special Services Unit. Being a Program Administrator in the
15 Forestry Training Program in the camp system, back into Special
16 Services as a Senior Special Agent in charge of the San
17 Francisco office. A lot of involvement with various law
18 enforcement agencies in matters pertaining to escapees,
19 parolees, employees of the Department.

20 Progressing into administrative slots at the Men's
21 Colony at San Luis Obispo, and the renovation and activation of
22 the old West Facility back into a viable compound to house the
23 overcrowding.

24 Placed then in Folsom as the Chief Deputy Warden to
25 assist in bringing that institution into compliance with the
26 Department's policies and practices, and subsequently placed at
27 Chuckawalla Valley State Prison as Administrator in late
28

1 September of last year.

2 I think I understand the processes and the mandates
3 of the Governor and the Legislature, and what is intended to do
4 as far as rehabilitation and/or incarceration of inmates. I
5 feel I have a good grasp of the techniques necessary to operate
6 as a Warden at Chuckawalla.

7 CHAIRMAN ROBERTI: Thank you.

8 Any questions? Senator Petris.

9 SENATOR PETRIS: I defer that to see the rest of the
10 testimony.

11 CHAIRMAN ROBERTI: Is there opposition in the
12 audience? Please come forward.

13 Senator Petris, can you conduct the meeting for one
14 moment?

15 SENATOR PETRIS: Have a seat. Give us your name and
16 whether or not you're representing any organization or you're
17 here as an individual.

18 MR. AUBERT: Yes, Senator.

19 My name is Larry Aubert, and I'm a former employee of
20 Folsom Prison. I'm not representing any organization.

21 However, before I start with my presentation, I'd
22 like to read a statement brought by another officer who came
23 here earlier, but because of the postponement, he had to go to
24 work.

25 "Dear Rules Committee:

26 "I'm one of the officers who is
27 currently working at Folsom Prison
28

1 and who went to Senator Presley
2 about the waste and mismanagement at
3 Folsom Prison in January of 1989
4 while Mr. Briggs was the Deputy
5 Warden of New Folsom.

6 "Once it was known that a group
7 of officers had gone to Senator
8 Presley with their concerns, not
9 only as employees but as taxpayers,
10 Mr. Briggs took it upon himself to
11 gather a group of officers in one of
12 the facilities of New Folsom and
13 threaten them with adverse action if
14 they were found to be communicating
15 with their elected officials about
16 the way the prison was being
17 administered.

18 "Just before Mr. Briggs'
19 actions, Mr. Rowland made the
20 statement that he speaks for all
21 wardens when he says that reprisals
22 as a means of discouraging
23 complaints will not be tolerated.
24 He further stated that if a
25 verifiable case of such reprisal is
26 brought to his attention, he will
27 take expeditious and appropriate
28

1 action.

2 "Well, this case was
3 verifiable, and Mr. Rowland's
4 expeditious and inappropriate action
5 was to promote Mr. Briggs to Warden
6 of the Blythe prison.

7 "You would think that the
8 competition for warden slot would be
9 very selective, and it certainly
10 wasn't in this case.

11 "Before a confirmation hearing
12 is held, a notice should be put up
13 at every institution that the
14 individual has worked at. I found
15 out about today's hearing only
16 yesterday. Not many employees will
17 come forward for fear of reprisals.

18 "You won't find many
19 Correctional employees who know
20 Mr. Briggs that trust him. Trust is
21 the emotional glue that bonds
22 followers and leaders together. It
23 cannot be mandated or purchased; it
24 must be earned.

25 "As it stands now, Corrections
26 is over managed and under led.
27 Mr. Briggs has controlled rather
28

1 than organized; administered
2 repression rather than expression;
3 and held his employees in arrestment
4 rather than evolution.

5 "Mr. Briggs isn't a good
6 listener, as his ego prevents this.

7 "Mr. Briggs' last assignment
8 was working under a warden who said,
9 quote, 'He didn't care about officer
10 morale. Their paycheck is their
11 morale.' Since Mr. Briggs didn't
12 defer with this idea, he must
13 concur.

14 "Because of administrators like
15 Mr. Briggs, the staff is consumed
16 with fear, insecurity, and
17 resentment instead of challenge,
18 satisfaction and self-fulfillment.

19 "A leader without trust is like
20 a bird without wings; a pathetic
21 creature able to do little but strut
22 about for a little time, weak and
23 vulnerable, accomplishing little,
24 and soon displaced.

25 "People want to be uplifted and
26 will not continue to support a
27 fraud. They will, however, forgive
28

1 mistakes and continue to support a
2 leader that is believed to be
3 honest, fair and trustworthy.

4 "It is no longer adequate to
5 treat employees as human resources
6 with concern only for their labor
7 and not for their lives. Mr. Briggs
8 does not understand that a leader
9 profoundly affects people's health,
10 life styles, and sense of
11 personhood.

12 "No leader will be able to
13 create a viable future for an
14 organization that does not respect
15 the dignity of its workers. If you
16 don't believe that, look at all the
17 unnecessary stress retirements which
18 plague the State from the Department
19 of Corrections.

20 "Anyone can be a warden in the
21 Department of Corrections when all
22 one has to do is ask for money. Has
23 Mr. Briggs or any other new warden
24 had any innovative ideas how to
25 reduce costs?

26 "When you look through
27 Mr. Briggs' personnel file, would
28

1 you please see if he was fired from
2 the Special Services Unit for doing
3 something unethical to convict an
4 officer.

5 "I'm at a loss as to why CCPOA
6 isn't fighting this confirmation.

7 "Thank you for your time and
8 consideration.

9 "Respectfully submitted by
10 Officer Michael Corcoran."

11 And I'd like to thank the Committee for letting me
12 read that, and I'd like to introduce his statement.

13 CHAIRMAN ROBERTI: Yes, please do. The Sergeant
14 will take that and we'll introduce that into the record.

15 Thank you.

16 Senator Petris, do you have a question? Are there
17 any questions?

18 MS. MICHEL: He has his own statement.

19 CHAIRMAN ROBERTI: Do you have a statement?

20 MR. AUBERT: Yes, thank you, Senator.

21 I'd like the Committee to understand that I'm
22 approaching them not as a malcontent or just a bitter former
23 employee.

24 I'm approaching this Committee as a concerned
25 taxpayer and as a citizen.

26 I had eight years with the Department, two and a
27 half years of which were as a Sergeant at Folsom Prison.
28

1 I have evidence that Mr. Briggs has been and likely
2 will continue to be a part of bad administration. I believe
3 the taxpayers deserve more for their money, and I would like
4 the Committee to please consider if Mr. Briggs is a worthy
5 choice for such a position of importance.

6 Should this Committee award this position to a man
7 who already has abused his authority by wrongfully firing
8 employees because of his political motives; managing by
9 threat such as when he threatened adverse action against
10 employees who were contacting their elected representatives
11 regarding mismanagement at Folsom Prison; lying to the press
12 about the incident? And I know the effects of management
13 such as this, or mismanagement such as this, because I've
14 personally been professionally, financially, and emotionally
15 through the wringer through the process, and Mr. Briggs was a
16 major part of this process at Folsom Prison at the time that
17 I went through it.

18 On February 6, 1989, I was wrongfully fired. I've
19 been wrongfully fired twice from the Department of
20 Corrections as a result of an investigation conducted by
21 staff under the supervision of Mr. Briggs. During this,
22 quote, "investigation", my due process was repeatedly
23 violated. These violations included: refusal to notify me
24 of the charges against me; denying that I was being
25 investigated; not affording me representation during
26 interrogation; not keeping my investigation confidential; and
27 deciding my guilt before an investigation could be completed.
28

1 Beneficial evidence was also withheld from me.

2 I was charged with violating a rule that didn't
3 exist until two days after the incident, and the State used
4 witnesses -- I should say not the State, but Folsom Prison's
5 administration used witnesses against me who admitted lying
6 to me, falsifying the reports, which is a felony. They were
7 suspended for a few weeks, but because I was their
8 supervisor and did not know of their misconduct, I was fired.

9 The second termination that I faced on March 20th
10 of this year was for legally using a tape recorder to prove
11 that I was denied due process and set-up the first time I was
12 fired. When I approached Director Rowland's office to have
13 the matter of administrative misconduct investigated, I was
14 fired.

15 Is it a discredit to the Department to try to have
16 misconduct investigated? And isn't that our duty?

17 I said I would offer evidence that Mr. Briggs was
18 involved. First, the notice of my first termination with
19 Mr. Briggs' signature in place of Warden Borg, and I'd like
20 to offer that.

21 I think I said that I would show why and how
22 Mr. Briggs did it, and I think the why was by Mr. Denninger,
23 who, I believe, is the Chief Deputy Director in the
24 Department of Corrections now.

25 On December 22nd of 1988, he circulated a memo
26 statewide to every prison in California. A quote from this
27 memo is:
28

1 "This incident serves as an
2 example of what can happen when
3 first and second line supervision
4 erode and become ineffective."

5 He goes on to say that the lead officer:

6 "... controlled the unit's operation
7 with the unit supervisor's tacit
8 approval of the improper actions."

9 Mr. Denninger wrote this memo five days before the
10 investigation was completed. He convicted me before the
11 investigation was even complete. And he also broke State
12 law, because an Internal Affairs investigation is supposed to
13 remain confidential. And I think someone with Mr. Briggs'
14 experience in the Special Security [sic] Unit would be aware
15 of what is proper and what is legal during an Internal
16 Affairs investigation.

17 Also attached is a memo, the result of
18 Mr. Denninger's memo, in Susanville. The Chief Deputy
19 Superintendent of Susanville distributed his reaction to his
20 and stated:

21 "This case graphically illustrates
22 that managers and supervisors cannot
23 delegate their supervisory authority
24 and are accountable for their
25 respective areas and staff."
26
27
28

1 "Please feel free to duplicate
2 Mr. Denninger's memo and share it
3 with your managers and supervisors."

4 Well, this is great. This is dated December 23rd,
5 1988. This is also before my investigation was completed.

6 I think the statewide distribution of a memo does
7 not constitute confidentiality.

8 That is why I feel they were politically motivated
9 to take action against myself, some other supervisors, and I
10 have no idea why officers who committed felonies got
11 suspended for two or three weeks.

12 Now, as far as the how, I feel the biggest stick
13 that administrators have over an employee's head in the
14 Department of Corrections is the State Personnel Board. Now
15 granted, hopefully, most administrators don't abuse this
16 power, but there are certain judges and there are certain
17 administrators -- I feel Mr. Briggs is one -- who benefit
18 from a judge. This is a judge that I faced, and this a quote
19 from an article he wrote in CSEA supervisor's magazine in
20 April of '90. This is a quote from an unbiased judge:

21 "There's nothing wrong with taking
22 an adverse action when it's needed
23 and maybe finding out somewhere
24 along the line that the whole thing
25 can't be proved or verified. Then
26 the State Personnel Board modifies
27 or changes the action to some
28

1 extent. That makes a viable
2 system."

3 End of quote.

4 Basically, Judge Waller is saying that we don't
5 need proof, that administrators don't need proof to fire
6 somebody, to put them out of work, to bankrupt them, to
7 what ever other emotional trauma you go through when you're
8 getting fired.

9 I'll try to rush this.

10 That is the why and the how.

11 I said I was wrongfully fired, and my proof of that
12 is that I was rehired in July of 1989, after being fired the
13 first time. Warden Borg ordered me into his office for an
14 interview that day, and I concealed a tape recorder in my hat
15 and tape recorded this interview.

16 During this interview, Warden Borg stated that,
17 when I questioned him about the charges against me, he said:

18 "No, it may be had to be written
19 that way, but the charges are I
20 think you knew what went on, every
21 goddamn thing."

22 He went on to say:

23 "I'm telling you what I think ...
24 but I don't have the evidence or you
25 wouldn't be sitting here."

26 Now, the evidence was supposed to have been
27 provided by Mr. Briggs. Warden Borg didn't have the
28

1 evidence, yet he fired me anyway. Mr. Briggs signed the
2 paper so he knew that the evidence wasn't there also.

3 Warden Borg also stated, when I inquired about
4 Mr. Denninger's memo prejudicing the investigation against
5 me, he said -- told him that the memo had been distributed
6 statewide, saying the incidents in B Facility were the cause
7 of poor supervision, and he said:

8 "It was poor supervision."

9 I said:

10 "... that was decided before the
11 investigation was even concluded."

12 Borg said:

13 "There was no doubt about it."

14 When I said:

15 "Your minds were ... you already
16 decided before you had even finished
17 the investigation ..."

18 They had already decided that. He said:

19 "Oh! You bet. It was so obvious
20 the first fucking day I got into
21 it, Larry."

22 I offer this transcript of that interview as
23 evidence that due process was denied me, that the
24 administration knew about it, and that it's a motive of
25 operation at Folsom Prison, and I don't think it's stopped.

26 CHAIRMAN ROBERTI: What were the charges?

27 MR. AUBERT: The charges were -- the original
28

1 charges were dishonesty, which was thrown out. That was the
2 only settlement.

3 There were eleven general charges to support four
4 general charges -- eleven specific charges. Dishonesty,
5 which was thrown out. Eight of the charges involved an
6 alleged unjust shooting by an Officer Spink of an inmate
7 sitting on a toilet. They held me responsible in numerous
8 ways. Officer Spink has since been acquitted. The witnesses
9 that were used against him were the same witnesses used
10 against me, who lied and falsified their reports. That's the
11 main reason the case was acquitted. The jury didn't feel
12 that the State had credible witnesses.

13 My settling with the State was not an admission of
14 guilt, although technically or legally they might say it is.
15 After five months being out of work, it's more an admission
16 of poverty. The State had postponed my case at least twice.

17 And getting back to the original charges, the last
18 ones involved breaking of procedure during a forced cell
19 extraction of an inmate. The rule that I was accused of
20 breaking did not exist until two days after the incident.

21 CHAIRMAN ROBERTI: What's this rule again?

22 MR. AUBERT: The rule was that during an emergency,
23 the Watch Commander and the Administrative Officer of the Day
24 had to be present. It wasn't a written procedure until two
25 days after the incident.

26 That was also included in the documents used
27 against me.
28

1 I returned to work, and the transcript was made.
2 Instead of trying to sue the State, I tried to handle the
3 matter internally and very discretely by approaching the
4 Director's office with this transcript. I was promised that
5 Warden Borg's actions would be investigated, and that he
6 would not view a copy of this transcript. Both promises were
7 broken, and on March 20th of this year, I was fired.

8 The charges are: discourteous treatment of public
9 or other employees; violation of this part or Board Rule 172;
10 and other failure of good behavior. And, of course, Rule
11 3391, conduct.

12 And I still question when it is misconduct on my
13 part to want administrative misconduct investigated. I felt
14 that I was very reasonable in the matter, and that they're
15 trying to suppress this type of evidence from becoming
16 public.

17 As I said, I'm not trying to sue. I just feel that
18 the public and the Legislature should be aware of what is
19 going on at the upper level of administration at Folsom
20 Prison and some other prisons, too. There are no checks and
21 balances. The Legislature answers to the press and the
22 public. We answer to the administration, but who does the
23 administration answer to?

24 And I don't have anything else to add. I'd like to
25 thank the Committee for their time, and if you have any
26 further questions, I'll do my best to answer.

27 SENATOR PETRIS: Who was the Director who broke the
28

1 promise regarding the release of the transcript?

2 MR. AUBERT: It was Director Rowland's
3 Administrative Assistant, Mr. Russell Cox.

4 SENATOR PETRIS: Did you discuss that with him
5 afterward, after the release?

6 MR. AUBERT: I had a, quote-unquote, appeal hearing
7 within a week of my termination, and they said that -- the
8 Director's, administration's, response was that I -- their
9 promises were valid as long as the taping was legal, but they
10 said it was illegal. Folsom had recommended that I be
11 prosecuted for a felony.

12 The District Attorney has since declined
13 prosecution. What I did was legal. I was representing
14 myself.

15 I don't think that I would conceal a tape recorder
16 again, but I think it did prove what I was trying to say all
17 along: that you can be set-up out there because these men
18 have this type of power; they will abuse it without some type
19 of check and balance.

20 And I think Mr. Briggs has been a part of this type
21 of misconduct in the past. I don't expect him to change. I
22 think the taxpayers have better -- better coming for their
23 money. They have much more coming for their money.

24 And I think you people can help there, and I hope
25 so.

26 All the documents I've quoted from I'd like to
27 introduce as evidence.
28

1 CHAIRMAN ROBERTI: Yes, please do.

2 Any further questions?

3 Maybe we could ask for a response from Mr. Briggs.

4 MR. BRIGGS: Yes.

5 I am aware of Sergeant Aubert and the charges,
6 initial charges, that I was involved in.

7 I cannot speak for the second set of circumstances.
8 I was already at Chuckawalla.

9 The first one was the use of the Taser. There were
10 other charges involving inmates which got into brutality and
11 also --

12 MR. AUBERT: That is not correct.

13 CHAIRMAN ROBERTI: Let him finish.

14 MR. AUBERT: Yes, sir.

15 MR. BRIGGS: Those were the allegations, and we
16 have staff support information along those lines. And he was
17 terminated, and I did the signature on the termination
18 documents.

19 CHAIRMAN ROBERTI: Was he accused of knowing about
20 it, or what?

21 MR. BRIGGS: He was the Sergeant in charge of the
22 details going in and utilizing the Taser cell extractions.

23 When he talks about the policy that came out two
24 days after being served, we did tie it down so that an
25 administrator had to be on site. And since that policy,
26 which has been in effect at least two years, I think, the use
27 of the Taser dropped, and I can prove that, dramatically from
28

1 something like three or four times a week to -- the last
2 count I had was --

3 CHAIRMAN ROBERTI: Why was he rehired?

4 MR. BRIGGS: I cannot speak to his rehire. I was
5 not there.

6 CHAIRMAN ROBERTI: You weren't there.

7 He indicated that one of his subordinates had been
8 acquitted.

9 MR. BRIGGS: No, that was a separate episode where
10 there was a shooting, and the District Attorney's Officer
11 preferred charges against one of our officers, and he was
12 prosecuted and found not guilty in a jury trial.

13 CHAIRMAN ROBERTI: You're saying the charge for
14 which the Sergeant here was disciplined because of improper
15 supervision of subordinates was another charge?

16 MR. BRIGGS: Correct. This Sergeant was. The
17 other one was a Correctional Officer working for him.

18 CHAIRMAN ROBERTI: Do you have any response to
19 that?

20 MR. AUBERT: Yes, I do.

21 I was not terminated for abusing the Taser or
22 brutality. That is another untrue statement, Mr. Briggs.

23 I was fired for not knowing that I was being lied
24 to, so, being unaware of what was going on in my unit.
25 However, State law and federal case law -- case law at the
26 State level, also, have proven that a supervisor is not
27 responsible when they are being lied to. And it was
28

1 established, and the administration knew about it.

2 As I said before, the dishonesty was dropped, and
3 this procedure, as Mr. Briggs acknowledged, was written two
4 days afterwards, after the incident.

5 MR. BRIGGS: Can I respond to that?

6 CHAIRMAN ROBERTI: Yes.

7 MR. BRIGGS: What he's talking about, it was a
8 procedure where an administrator would have to be on site.
9 Prior to that, it was at the unit level they could authorize
10 removal of people by the use of the Taser, and that's what
11 he's taking about, the change.

12 But it was always policy that a supervisor had to
13 authorize --

14 CHAIRMAN ROBERTI: But there was a policy? You're
15 saying there was a policy that he should have been there at
16 the time?

17 MR. BRIGGS: Yes.

18 MR. AUBERT: Mr. Briggs stated that the policy was
19 at that time, before their ex post facto procedure was
20 written, was for unit approval. At the time, I was the
21 acting Lieutenant. I was the unit Lieutenant who was
22 responsible for approving or not approving it.

23 Also, during the subsequent investigation, the
24 inmate admitted to the misconduct, refusing to come out for a
25 search. We were looking for six inches of metal which was in
26 the highest security unit in the state. And we routinely
27 found weapons which were meant for staff: knives and spears
28

1 that were meant for staff. And that's what we were looking
2 for. We searched almost every house or cell in that housing
3 unit. There was nothing unusual about it.

4 As I said, the inmate even admitted to the
5 misconduct. To this day, I don't know why the investigation
6 was conducted.

7 MR. BRIGGS: I know why it was conducted, because
8 we had numerous complaints and injuries occurring to inmates
9 because of the handling under the, quote, supervision of this
10 Sergeant. And he was pinpointed as the person responsible
11 for a lot of the acts, and we took action on that.

12 CHAIRMAN ROBERTI: Any other questions?

13 SENATOR MELLO: Mr. Chairman, I have a couple
14 questions to the Superintendent.

15 CHAIRMAN ROBERTI: Senator Mello.

16 SENATOR MELLO: I didn't hear you respond. He
17 made a statement that you --

18 CHAIRMAN ROBERTI: What was your last name again?

19 MR. AUBERT: Aubert.

20 SENATOR MELLO: This is to Superintendent Briggs.
21 He made a statement that you notified, you told
22 staff people not to talk to the Legislators.

23 Do you deny that, or is that a correct statement?

24 MR. BRIGGS: That's an incorrect statement. That
25 is an incorrect statement.

26 SENATOR MELLO: You never told anybody that at all?

27 MR. BRIGGS: That's true. I did not tell them not
28

1 to talk to their Legislators.

2 SENATOR MELLO: This happened this morning in my
3 office. A similar incident came up on another matter. While
4 they were there, I reached over and I pulled out the
5 Constitution. I read the First Amendment of the Constitution
6 of the United States, which allows the freedom of expression
7 and freedom of speech.

8 Personally, I'd like to ask him again. Do you have
9 any evidence that he said this?

10 MR. AUBERT: Mr. Briggs, I believe, had a grievance
11 filed upon him by the California Correctional Peace Officers
12 Association. According to the Sacramento Bee, an article
13 written by a Mr. Stephen Green, he reported that Mr. Briggs'
14 initial response was similar to what he just gave to you,
15 Mr. Mello.

16 However, I believe the matter was settled by some
17 type of letter of apology, and you usually don't apologize
18 unless you actually did something.

19 SENATOR MELLO: So, you don't have any evidence
20 that would be --

21 MR. AUBERT: I don't have that on me, sir, but I
22 believe with some further investigation, you might find that
23 proof.

24 MS. MICHEL: There is a copy of the grievance.
25 Each Member has a copy of the grievance filed by the union.

26 SENATOR MELLO: May I ask Ms. Michel, what is the
27 basis of the grievance that as filed? I haven't had a chance
28

1 to review this.

2 MS. MICHEL: The assertion was that Superintendent
3 Briggs, when he was Deputy Warden at Folsom, threatened staff
4 and told them that they were not to be contacting
5 Legislators, either personally or in letters. That's what
6 the assertion was.

7 SENATOR MELLO: Who made that assertion?

8 MS. MICHEL: There are a number of correctional
9 officers on the second page of that who signed the grievance.

10 The union represented them, and the grievance was
11 forwarded to Mr. Rowland as Director of the Department.

12 SENATOR MELLO: Do I understand that this was
13 resolved through a letter of apology on your part,
14 Mr. Briggs?

15 MR. BRIGGS: No, that is not correct.

16 The Warden responded to the grievance. The
17 grievance related to two or three actions on my part as far
18 as demeanor at the time I was talking to the group. It
19 talked about some of the verbiage I utilized. He had also
20 mentioned that as an accusation, and that was where the
21 union, when they got the full story, because it was third
22 party, removed their grievance.

23 I did not indicate they could not talk to their
24 Legislators.

25 I think what the actual accusation -- what the
26 charge was, there was information going to reporters
27 directly. And the intent was to tell them no --
28

1 SENATOR MELLO: We're not really out soliciting
2 more people to talk with, but I think we certainly don't want
3 to see anyone prohibited from contacting a Legislator.

4 MR. BRIGGS: I fully appreciate that.

5 SENATOR MELLO: The people that contact me or my
6 colleagues, it's usually as the last resort. They've hit a
7 brick wall, and they can't get any further, and they look to
8 us as a way of getting some help. Some of the issues are
9 very difficult.

10 I think people have a right to speak out.

11 I have another question of Mr. Briggs also. I come
12 to understand, because I'm very much interested in the Arts
13 in Correction program -- I helped start it back in 1978 --
14 that you've made a statement that you don't believe the
15 program could be implemented in Chuckawalla in the prison
16 there because -- and I happen to know about Chuckawalla. I
17 made an investment some years ago and planned to homestead a
18 piece of land out there, and I visited it a few times. It's
19 really a hot, desolate part of the state. I only visited it
20 a few times, and my homestead never did come through.

21 But, you know, why are we putting a prison out
22 there if we can't --

23 MR. BRIGGS: Well --

24 SENATOR MELLO: Let me finish asking the question.
25 If you don't mind, I really would appreciate that, because I
26 haven't asked the question yet.

27 Sooner or later, you're going to need three votes
28

1 here to get confirmed to the Floor.

2 The information I have from my consultant on the
3 Joint Committee on the Arts is that you've indicated that you
4 don't believe you can get any artists, or any groups of
5 volunteers to come there and help provide the instruction
6 necessary to implement the Arts in Correction program in this
7 prison.

8 This raises several concerns. Number one, are you
9 or are you not in support of the program?

10 Number two, have we failed to properly air
11 condition the building to make it a workable place for even
12 people like yourself to enjoy working there in a nicely air
13 conditioned place?

14 Or is this going to be a facility that, as was once
15 built years ago, in a remote area, so when we talk about
16 sending people to Siberia and other places, did we invest in
17 a site up there that just cannot have comprehensive programs
18 really to help with the rehabilitation of inmates?

19 MR. BRIGGS: Okay.

20 I'll respond that I think the conversation related
21 to the facilitator, having somebody coming out of Riverside,
22 and I was talking about logistics.

23 We have implemented Arts in Corrections with
24 drawing classes, water-color, monoliths, monoprints,
25 experimental drama, theater. I don't understand why --

26 SENATOR MELLO: I can look into it further.

27 How many inmates are signed up in the classes?
28

1 MR. BRIGGS: How many? Let's see. Average of ten
2 students in the painting and the drawing classes, and twenty
3 in the theater classes.

4 Now, we've had -- experimental drawing is only
5 starting. We've had theater in February and March;
6 water-color back in January and February.

7 As I say, as we can contract with artists to come
8 in and present this, we're doing it.

9 SENATOR MELLO: And so, you've had about 30 people
10 that you've identified in various programs?

11 MR. BRIGGS: I would say probably 80 to 100.

12 SENATOR MELLO: Out of how many people?

13 MR. BRIGGS: Right now, I am still activating
14 Chuckawalla. We're now at 2600. When I arrived, we had 1300
15 inmates on site.

16 SENATOR MELLO: That's not really very many, but
17 you must be familiar with the Arts in Corrections because of
18 the other experience.

19 Are you sold and committed that it's a worthwhile
20 proposal to have in our institutions?

21 MR. BRIGGS: We're interviewing, I believe, next
22 week for facilitator again. I don't understand -- you know,
23 the information that --

24 SENATOR MELLO: I'll definitely look into it.

25 Tell me, is this facility, because of the heat in
26 the summer, is it going to have some negative impact as far
27 as our ability to run a comprehensive correctional facility?
28

1 MR. BRIGGS: No, not when you consider we're using
2 classrooms and what not. And at the present time, I have
3 approximately 500 students in classrooms during the heat, and
4 I'm sure if they can do their studies as far as the basics,
5 they certainly ought to be able to do the art types of
6 programs in those same areas.

7 SENATOR MELLO: My experience was out in the summer
8 time: July, August, September. The temperature rises to
9 about 125 degrees in that area; is that correct?

10 MR. BRIGGS: That's correct, very hot.

11 We have maintained the buildings at a limit of
12 about 80, and prior to my arrival last summer, about 82-84
13 degrees has been the maximum inside the buildings.

14 SENATOR MELLO: Is the building adequately air
15 conditioned, though, to maintain a comfort level for everyone
16 there?

17 MR. BRIGGS: It's enough to maintain our schools
18 and class, so I assume that they could do the Arts in
19 Corrections.

20 SENATOR MELLO: How about all the dormitories? Are
21 there any deficiencies as far as the air conditioning?

22 MR. BRIGGS: Deficiencies, yes. Certainly we could
23 improve in some areas, and we're talking about various
24 venting problems that we have, and the upkeep of the
25 equipment is a very ongoing problem because of the water
26 cooling system and the hard water we're dealing with.
27 There's quite a bit of repair going on.
28

1 would lobby everybody to keep them in, because I just don't
2 think some of them could be on the outside.

3 But with a lot of them, I'm willing to make an
4 investment to those that, if we can rehabilitate them so they
5 can return to education, which I think is vital and
6 important, and alternative programs that prepare them for
7 skills, so they can return to society on the outside and not
8 be another statistic in the recidivism column, but maintain
9 the ability to work, and earn, and live side by side in
10 society, that's the investment I'm willing to make.

11 I just don't think we're doing enough to
12 rehabilitate inmates as we should, because I think a lot of
13 the philosophy is, you now, the brick and mortar, and
14 security, and the responsibility of prisons is to make sure
15 no one escapes, number one. And make sure that they get fed,
16 these so-called minimum standards.

17 But with the exception -- I know Mr. Rowland. He's
18 made a real effort in trying to improve the system, which I
19 think will benefit all of society. That's I want to see our
20 prisons carry out the job they're there for, but I also want
21 to see it not be an assembly line that just is a dead end
22 street for people who, with some help, can make it out of
23 prison.

24 The other thing is, talking about schools, I think
25 we're not doing enough to keep people from entering prison by
26 giving them a better education so they can gain the skills so
27 they don't have to turn to crime. I think a lot of people
28

1 fall in that category.

2 MR. BRIGGS: Well, speaking on behalf of
3 Mr. Rowland, he has made Chuckawalla one of the pilot
4 projects for the personal responsibility curriculum, which
5 inmates are getting in now in their education classes --
6 talking about academic things -- built right in, where they
7 talk about personal responsibility, and choices, and affects
8 on victims, and so forth. So, we have implemented that
9 already at the request and assistance of the Director, and
10 it's part of our curriculum.

11 SENATOR MELLO: Is there anything you think you
12 need from the Legislature to help improve your facility down
13 there?

14 You say you have a problem with air conditioning?

15 MR. BRIGGS: No, I have water coolers. I could use
16 air conditioning in some of the buildings.

17 [Laughter.]

18 SENATOR MELLO: Probably make sure it works good in
19 your office.

20 MR. BRIGGS: They work very well up in
21 administration, yes. I see to that first, as a joke, though.

22 Yes, there are some areas that are still
23 uncomfortable when you're talking about needing to really get
24 it down to a very enjoyable level, but I'm not sure we can do
25 that. The laundry, for instance, is a hot place, and they
26 open the doors to get material and merchandise in and out,
27 and it makes it very hot. We're talking about sliding doors.
28

1 I'm not sure we have the cure for those kinds of
2 problems.

3 SENATOR MELLO: Thank you very much.

4 CHAIRMAN ROBERTI: Are there any other questions?
5 Are there any other witnesses? Please come
6 forward.

7 MR. McHUGH: Mr. Chairman, Members, Gavin McHugh,
8 California Correctional Peace Officers Association.

9 I wanted to come up and comment on just two points
10 very briefly in response to some of the comments Mr. Aubert
11 made.

12 In the issue of the grievance, we're very well
13 aware of the specifics of the grievance, and it was a request
14 to resolve things at the administrative level. It was
15 resolved informally at the second level to the satisfaction
16 of our chapter.

17 Basically, we've communicated with them. They said
18 that it was handled by the Warden and Mr. Briggs, and at a
19 level that was satisfactory to them.

20 Secondly, on the issue of our position on
21 Mr. Briggs' confirmation, we're neutral. Basically, we
22 generally stay pretty neutral on these kinds of confirmation
23 hearings. What we'll do is, we will check with our local
24 chapter down at Chuckawalla Valley. They communicated to us
25 that Mr. Briggs is doing a fine job down there, is very, very
26 affirmative, open-door policy, will hear grievances from
27 staff, and is working out just fine.
28

1 So really, in response to Mr. Aubert, we've just
2 got to say the Association is neutral, and we understand that
3 Mr. Briggs is doing fine at Chuckawalla Valley.

4 CHAIRMAN ROBERTI: Thank you very much.

5 Yes, please come forward.

6 MR. RAYA: Would this be the appropriate time to
7 give testimony on his behalf?

8 CHAIRMAN ROBERTI: Yes. I didn't call for that,
9 but please come forward.

10 MR. RAYA: My name is Tony Raya. I'm the Northern
11 Vice President of the Chicano Correctional Workers
12 Association. I'm here representing Mr. Danny Macias, our
13 state President.

14 We're the largest professional association, to my
15 knowledge, in State service. We are just shy of 2,000
16 members strong throughout the state, with chapters at most
17 every institution, including at Chuckawalla.

18 I've got a couple of letters with me. One from the
19 local chapter of CCWA at Chuckawalla indicating support for
20 Mr. Briggs' confirmation.

21 And I also have a letter from Danny Macias, our
22 state President, indicating support of the State body for
23 Mr. Briggs.

24 I'm not going to pull them out and read them.
25 We've taken up quite a bit of your time, and I realize that
26 it's valuable.

27 I'd like to highlight the fact that Mr. Briggs has
28

1 been and continues, to my knowledge, to embrace the
2 affirmative action goals of the Department of Corrections. I
3 happen to know that he embraces the goals and objectives of
4 the Chicano Correctional Workers Association, has worked
5 closely with us, to my knowledge, at Folsom State Prison
6 while he was there, and we've got some people in the room who
7 have been the product of his affirmative action concern.

8 I am not quite sure whether they're going to speak
9 on his behalf, but I'm here to tell you that the statewide
10 organization fully supports and backs the confirmation of Mr.
11 Briggs to the Warden's position at Chuckawalla State Prison.

12 CHAIRMAN ROBERTI: Thank you very much.

13 Any further questions? Why don't we wait for
14 Senator Petris to get back. He had a couple more questions.

15 [Thereupon the Rules Committee
16 acted upon other items on the
17 agenda.]

18 SENATOR PETRIS: I'm sorry, Mr. Chairman, but I had
19 to go out. Too many things going on.

20 I don't want to go over ground that has already
21 been covered. There's one part that might overlap.

22 I'm concerned. And let me tell you, it's part of
23 my concern with the Department that goes back many years.
24 Some of the people that get into your Department think
25 they're the Army, and I'm glad they're not running the
26 country, because I don't like their attitude.

27 They come down hard on employees. They engage in
28

1 reprisals. There's a time we had hearings on the Folsom
2 thing, you know, a few years back. The hearings went on for
3 days and days. We got all kinds of promises there wouldn't
4 be any reprisals. There were reprisals. This has happened
5 at least four or five times since I've been on this Rules
6 Committee.

7 There's an attitude there that the Legislature gets
8 in our way. They're interfering with our operation, and they
9 ought to get away from us and leave us alone.

10 I find the threat of that in the allegations. The
11 allegations contend, both in the specifics that were signed
12 by 12 correctional officers and as the newspaper picked it
13 up: "we don't want you guys running to your Assemblymen.
14 Anybody that does that and steps out of the chain of command
15 is going to face some very adverse affects." That's supposed
16 to be a direct quote of what you said.

17 Now, there's 12 guys who put their careers on the
18 line, and they signed that complaint, and they said you said
19 these things.

20 Now, you sit here and tell us you didn't make such
21 a statement?

22 MR. BRIGGS: That's correct. We were talking about
23 going to the press. And one officer said, "What about the
24 Legislature?" And I said, "I would prefer that you go
25 through us," and I did not tell him he could not go to the
26 Legislature.

27 We were talking about direct links and leaks to the
28

1 press. That was the reason for the group; that was the
2 reason for the conversation.

3 SENATOR PETRIS: Why would they sign this and stick
4 their necks out?

5 MR. BRIGGS: That was pulled back because that was
6 third party in general. They were listening to one or two
7 people.

8 SENATOR PETRIS: They were not present?

9 MR. BRIGGS: And the author recanted his
10 information that he placed in there. He was not present.

11 SENATOR PETRIS: One of them recanted?

12 MR. BRIGGS: The author of the actual written
13 document you have there, Mr. Wheaton.

14 SENATOR PETRIS: Well, the ones who signed indicate
15 a direct knowledge.

16 You're saying they didn't have direct knowledge?

17 MR. BRIGGS: They didn't have direct knowledge of
18 all the information that was being alluded to in the
19 complaint; that's correct.

20 SENATOR PETRIS: The one who wrote it changed his
21 story?

22 MR. BRIGGS: No, he just got a better understanding
23 of what the conversation was by a conversation with Mr. Borg
24 and myself and others as to the situation and what was going
25 on in the conversation between the group and myself.

26 SENATOR PETRIS: Was the author of this a member of
27 the Department that was present when these alleged comments
28

1 were made?

2 MR. BRIGGS: No, he was not.

3 SENATOR PETRIS: Well, Mr. Chairman, I'd like to
4 bring the author in here and all the guys that signed this
5 letter. I want to see what they have to say, if that's
6 feasible at this late date.

7 It follows a pattern, Mr. Chairman.

8 CHAIRMAN ROBERTI: We got the letter in --

9 SENATOR PETRIS: This was back in August of '89.
10 They may not even remember what happened then, but I want
11 them to read this in my presence and tell me that, "I wasn't
12 there, and I was just going along with somebody else." We've
13 all done that.

14 CHAIRMAN ROBERTI: Or at least indicate to us, in
15 the event that it isn't the case.

16 SENATOR PETRIS: That's right.

17 I don't have any assurances or faith, rather, in
18 the assurances of your superiors that there won't be any
19 reprisal. They've done it not only in this agency; they've
20 done it in other agencies.

21 Sometimes there's an attitude in the
22 administration, and by that I mean generically -- it doesn't
23 matter who the Governor is, but it's worse with some
24 Governors than it is with others.

25 Some Governors have put out a direct Executive
26 Order: you're not to talk to the Legislators, period.

27 So, you could have a situation here where these
28

1 people allege there's a lot of food waste going on. We have
2 a special committee to look into that. We've spent a lot of
3 time and money under Senator Boatwright, and those things
4 happen. They happen in any institution. They happen in
5 General Motors. They happen in other private corporations,
6 and they happen in the public sector, you know. So, it's not
7 a surprising thing, human nature being what it is.

8 But we're supposed to have some kind of safeguards
9 and balances to check that out.

10 And the unfortunate thing for me here is that it
11 follows a pattern that I've seen over and over. Now, it may
12 not apply in this case, and I don't want to come down on you
13 just because of the pattern.

14 I want to find out, Mr. Chairman, to the extent
15 that we can.

16 CHAIRMAN ROBERTI: Why don't we put this over for
17 one week and try to request the presence of --

18 SENATOR PETRIS: As many of these people as we can
19 get, particularly the author.

20 CHAIRMAN ROBERTI: -- and especially the author.
21 Unless any new information comes in, we won't
22 reopen the hearing except for that.

23 SENATOR PETRIS: Yes.

24 Can I go into a different subject?

25 CHAIRMAN ROBERTI: Yes.

26 SENATOR MELLO: Senator, before you do, may I just
27 ask, on that same point, have any of these people been fired
28

1 or terminated, left their jobs, that signed this grievance?

2 MR. BRIGGS: Not to my knowledge.

3 SENATOR MELLO: You indicate they're all --

4 MR. BRIGGS: Warden Borg is here. He would be more
5 up to date.

6 MR. BORG: To my knowledge, they're all still
7 there.

8 SENATOR MELLO: They're all still employed. Now,
9 these are where? Out at Folsom?

10 MR. BRIGGS: They were at the time, yes.

11 SENATOR MELLO: To your knowledge, they're still
12 employed then?

13 MR. BRIGGS: There've been no reprisals that I'm
14 aware of.

15 SENATOR MELLO: Thank you.

16 MR. BRIGGS: I've been gone for about eight months.

17 SENATOR PETRIS: A question on substance abuse.

18 Unfortunately, that seems to go on in the prisons,
19 with all the security and everything else, as well as
20 elsewhere. In some prisons, even more, I guess because of
21 the experience of the inmates before they got in there.

22 Do you have any kind of program going in your
23 operation regarding substance abuse?

24 MR. BRIGGS: Yes, I have implemented both the A.A.
25 and the N.A. programs since arrival.

26 Of course, it is a new institution, and we're still
27 developing.
28

1 SENATOR PETRIS: What does that consist of?

2 MR. BRIGGS: The Alcoholics Anonymous and Narcotics
3 Anonymous.

4 SENATOR PETRIS: Oh, A.A., that's what it is? And
5 what's the other one?

6 MR. BRIGGS: N.A., Narcotics Anonymous.

7 SENATOR PETRIS: They're the same?

8 MR. BRIGGS: Yes.

9 SENATOR PETRIS: How many people are in that?

10 MR. BRIGGS: That is just developing. We have had
11 two sections that have been involved for about three months.
12 They meet twice a week. I'm only giving you a ballpark
13 figure, but probably out of the population, a couple hundred
14 are involved in the process.

15 SENATOR PETRIS: I assume that's voluntary?

16 MR. BRIGGS: That is voluntary, yes, sir.

17 SENATOR PETRIS: You rely on the word of mouth from
18 one inmate to another?

19 MR. BRIGGS: No, we publicize the programs.

20 SENATOR PETRIS: No, I mean, as far as informing
21 the rest of them. If it's a good program and it's working,
22 the expectation is that others will come in and join.

23 MR. BRIGGS: I think that's tried and true. I've
24 been a sponsor of A.A. myself in prior assignments, where
25 I've fostered the groups and what not. I'm a supporter of
26 that type of work, peer work, within the institutions.

27 SENATOR PETRIS: So, you started this new
28

1 institution right off the bat with these two programs?

2 MR. BRIGGS: By the time of my arrival, yes, the
3 institution had been operating for about a year at half
4 speed.

5 SENATOR PETRIS: How do you find its success rate?
6 Have you had enough time to figure out, or are you still
7 groping?

8 MR. BRIGGS: We're still groping. At Chuckawalla,
9 it's a Level II, so we have a high turnover because of the
10 short term of some of the inmates. It's really a tough one
11 to track.

12 We have now a more stable population beginning to
13 settle in. I'm talking about inmates, and we will be able to
14 get some ideas where we should increase our efforts.

15 SENATOR PETRIS: It'll take a while, I'm sure.

16 MR. BRIGGS: It'll take a while, and we are working
17 it through the educational program as well.

18 SENATOR PETRIS: That's good.

19 I wonder if I could ask the Warden to answer some
20 questions while he's here.

21 MR. BORG: I'm Robert Borg, Warden at Folsom
22 Prison.

23 SENATOR PETRIS: Mr. Borg, as you can hear, I'm a
24 little bit concerned about some things. I want to get to the
25 facts as well as I can.

26 Do you recall this petition and the grievance and
27 the appeal?
28

1 MR. BORG: Yes, sir.

2 SENATOR PETRIS: Did the appeal go to you, or
3 somewhere in between?

4 MR. BORG: It came to me eventually. I don't
5 remember all the steps it took, but it came to me through the
6 local chapter of the union.

7 SENATOR PETRIS: And the final disposition was that
8 this letter was withdrawn by the author?

9 MR. BORG: Yes, the author was Ray Wheaton, who was
10 a union representative. And he took the information that he
11 had gotten from other people and put together the letter in
12 his own words.

13 SENATOR PETRIS: Kind of like a shop steward?

14 MR. BORG: Yes.

15 Then, when it first came to me, Mr. Briggs was on
16 vacation. It was something that was important enough that we
17 held a meeting in Mr. Briggs' absence with all the people
18 that would attend the meeting that signed that petition.

19 I believe there was probably six people or seven of
20 the people that signed there came to the meeting.

21 SENATOR PETRIS: Did any of them have knowledge of
22 what was supposedly said by virtue of their presence there?

23 MR. BORG: Yes, yes, except that we had about three
24 union representatives that were there. I know Ray Wheaton
25 wasn't at the meeting. I think at least one or two or the
26 others, and the other people that were there were at the
27 meeting that you're referring to.
28

1 SENATOR PETRIS: Can you recall -- I know it's
2 been quite a few months now.

3 MR. BORG: I recall it.

4 SENATOR PETRIS: I guess those things don't happen
5 every day.

6 MR. BORG: No.

7 SENATOR PETRIS: Thank goodness.

8 What was the tenor of their statements? Did they
9 flatly allege the same things that are in this grievance?

10 MR. BORG: Could I give you some background on it?

11 SENATOR PETRIS: Yes.

12 MR. BORG: We had had a major incident in C
13 Facility, which resulted in several adverse actions. And
14 there -- hopefully, we were getting these behind us. It was
15 called the C Facility 13, as I recall, because there were 13
16 staff involved.

17 Mr. Briggs was going to go out. He had told me
18 that morning, "I'm going out to meet with the staff and see
19 if we can't set their minds at ease that everything's going
20 to be all right. We're dealing with what we have to deal
21 with, and it'll be all right."

22 Later that afternoon, I don't remember if
23 Mr. Briggs told me or someone else told me, but I was told
24 that that meeting went to pot, that all of a sudden, it was
25 not the meeting that it was intended to be. And that
26 Mr. Briggs had made a couple of statements that were very
27 much objected to, and one of them was that he said you can't
28

1 go to the Legislature or you're going to be in trouble.

2 I talked with several of the people included in
3 this meeting and some outside this meeting. And I think
4 we're dealing with what people heard, not necessarily what
5 was said, or they heard the words and took a different
6 meaning to it.

7 I know that it was said that, "give us a chance
8 first," because that's what I always tell people. You know,
9 you can go anywhere you want any time you want to. All I ask
10 of you is, give me a chance to deal with the issue. If I
11 can't deal with it, then of course, take it where ever you
12 want to, but give us an opportunity anyway, and we'll show
13 you that we can deal with these issues.

14 I think there were high emotions. There had been
15 some staff who terminated behind the incident. It had to do
16 with some inmates getting beat. It was a big newspaper
17 article also on that.

18 We had the first meeting. Like I said, Mr. Briggs
19 was on vacation. And we got the group together, and there
20 was quite a bit of emotion in there about things that were
21 said, and how they were said, and Mr. Briggs' perceived
22 demeanor, and that kind of stuff.

23 We talked about it quite a while and really
24 couldn't get a -- one statement that was said, but different
25 people heard different things said different ways. And one
26 person in particular didn't hear it the way that it was from
27 the rest of them, so it was a little hard to deal with
28

1 exactly what was said and wasn't said.

2 I clarified the issues. I apologized on behalf of
3 the administration. I told them I could not apologize for
4 Mr. Briggs because I don't really know what was said, but I
5 apologized because, obviously, it caused a problem we don't
6 need or want.

7 Then I reiterated the Department -- or, the
8 institution's and the Department's policy that you're free to
9 go to them any time you want to. You're even free to go to
10 the press. We don't appreciate that, because we don't like
11 it when things come out in the press, or they're unfounded,
12 and they affect the whole staff there, and it causes a lot of
13 embarrassment for a lot of people, and we'd like to have the
14 whole story come out and at least give us an opportunity to
15 give our side also.

16 We talked quite a while. They accepted my apology,
17 but they wanted an apology from Mr. Briggs. When
18 Mr. Briggs got back from vacation, we convened another
19 meeting. Some of the things that were said, in one instance
20 it was a case where Mr. Briggs actually misspoke. He was
21 talking about one thing, used another word, and didn't even
22 realize he had. No one brought it to his attention until
23 later, and that was clarified at the meeting.

24 And the result of that meeting was that everybody
25 left there satisfied that that was the end of it. We've
26 dealt with the issue. We now have a good understanding. We
27 didn't like the overall flavor of the meeting, but now we
28

1 understand. I think it was something that we all learned
2 from.

3 SENATOR PETRIS: Was that after this grievance had
4 been filed?

5 MR. BORG: Yes, yes. That was as a result of the
6 grievance.

7 SENATOR PETRIS: So, in effect, that meant a
8 resolution of the problem?

9 MR. BORG: I took the liberty to double-check
10 afterwards with a couple people that were directly involved
11 with this, including the author and other people. And their
12 feeling was that it was completely resolved, and it was an
13 issue that was behind us now; let's go from here.

14 SENATOR PETRIS: How does that affect the status of
15 the grievance? Is it withdrawn, or is it just put on ice?

16 MR. BORG: Well, I don't know the exact term to use
17 for it. It didn't go any further. It was resolved at the
18 second level, and we didn't grant everything that was asked
19 because the author authored it because he gets rather
20 flamboyant in his writing. And so, we didn't -- we joke
21 about that internally, but we didn't necessarily grant
22 everything they wanted, but we resolved the issues. So,
23 there was compromise involved, and the issue was resolved
24 satisfactorily for everybody involved.

25 SENATOR PETRIS: Are you here in support of
26 Mr. Briggs?

27 MR. BORG: Definitely so.
28

1 SENATOR PETRIS: You were intending to testify?

2 MR. BORG: I had not intended, unless I could
3 answer some questions or clarify some issues that might come
4 before the Senate panel.

5 SENATOR PETRIS: Did these meetings cover both sets
6 of allegations? One was the Legislature and the other was
7 calling people in Group C the Mexican Mafia.

8 Apparently that's a commonly used term in the
9 prison.

10 MR. BORG: Yes, but that's the one where Mr. Briggs
11 misspoke.

12 That facility -- we've been very active in our
13 equal employment opportunity program, and that one facility,
14 the Associate Warden, who's now the Chief Deputy, was
15 Hispanic. The Program Administrator was Hispanic. The
16 Lieutenant was Hispanic. The Sergeant was Hispanic. And the
17 whole chain of command was referred to, not officially but
18 informally amongst the staff, as the Mexican Connection.

19 When Mr. Briggs was talking, he referred to the
20 Mexican Connection and misspoke and said Mexican Mafia, and
21 went right on speaking, and no one brought it to his
22 attention at that time.

23 Later, it was brought to his attention, and he
24 didn't realize he had misspoke. There was no reason to say
25 Mexican Mafia; it was Mexican Connection.

26 And again, at the meetings that we had, that was
27 resolved.
28

1 SENATOR PETRIS: Well, I've been tagged as part of
2 the Greek Mafia. In some cases it's vicious and malicious,
3 and in other cases it's just a slip and not intended with any
4 malice.

5 MR. BORG: I would like to say that there --

6 SENATOR PETRIS: I hope that's what it was in this
7 case.

8 MR. BORG: That's true.

9 And I would like to say, too, in Mr. Briggs'
10 behalf, that the Mexican Mafia was a very prominent violent
11 Mexican gang at Folsom Prison, and they no longer are, and a
12 great deal because of Mr. Briggs and the activities that he
13 undertook as Chief Deputy.

14 SENATOR PETRIS: How many years was he there?

15 MR. BORG: Mr. Briggs was there when I got there.
16 He got there about a month before I got there, which would be
17 about September of 1985, and left about four years later.

18 SENATOR PETRIS: Thanks very much.

19 MR. BORG: You're welcome.

20 CHAIRMAN ROBERTI: Senator Mello.

21 SENATOR MELLO: It seems like every time a
22 question is posed, there's a little corner of it that wasn't
23 answered adequately.

24 I was interested in getting -- Senator Petris did a
25 great job in following this area, which I asked about
26 earlier, about telling people not to see their Legislators.

27 I want to ask you, you apologized on behalf of the
28

1 prison and the administration.

2 To me, when a person apologizes, I mean, I don't
3 apologize personally unless I feel I've done something wrong.
4 And then I admittedly will do that as a way of showing
5 something: you make a mistake, and you take responsibility
6 for it.

7 But if I feel I'm right, I'll be darned if I'll
8 apologize.

9 Now, what I want to know from you is, was this
10 spirit of apology one in which you thought that there was
11 some wrong on behalf of Mr. Briggs that needed correcting, or
12 was it just done in the way of -- I'd like to have him answer
13 it, and through the Chair you can comment yourself.

14 I'd like to know why you apologized, and what
15 brought you forth to offer this apology?

16 MR. BORG: What I told the group was, I would
17 apologize on behalf of the administration because it was very
18 evident that something had gone wrong at that meeting,
19 because I had some staff, who we consider excellent staff,
20 and there have been absolutely no reprisals, Senator, I can
21 assure you of that, because we appreciate being able to deal
22 with these issues.

23 I apologized because it was obvious that that
24 meeting caused some problems that we didn't have before that
25 meeting. And I apologized on behalf of the administration --

26 SENATOR MELLO: When they caused these problems,
27 who or what caused these problems?
28

1 MR. BORG: It was the emotions of the minute. It
2 was the perceptions that people had made, and other people
3 had made some other kinds of perceptions.

4 SENATOR MELLO: These people, were they part of
5 your administration or were they part of the prison
6 population.?

7 MR. BRIGGS: The perceptions were made by the staff
8 at the meeting.

9 I did tell them, as I said earlier, that I could
10 not apologize for Mr. Briggs, because I actually personally
11 did not know what was said and what was not said. But based
12 on my confidence in those staff, and the credibility that
13 they have with me personally, I knew that there was something
14 that was bothering them. They brought it to our attention,
15 and if there was something there that was done by this
16 administration that was offensive, then I would apologize for
17 that.

18 SENATOR MELLO: But you see, you haven't answered
19 my question in a direct way.

20 You said if there was something there, I want to
21 apologize.

22 What I want to know is, was there something there
23 that actually happened that you apologized for, or was there
24 not anything there that you apologized for --

25 MR. BORG: I could apologize for nothing that
26 happened at the meeting because I wasn't there and I didn't
27 know, and I explained that to them.
28

1 SENATOR MELLO: So, why did you apologize?

2 MR. BORG: Because I think it's important to keep
3 your staff together. And I have no problem having some sorry
4 feelings about something that happened that caused -- that
5 disrupted the daily harmony of the institution.

6 We have enough issues to deal with that we don't
7 need to get into other issues because --

8 SENATOR MELLO: To me, you keep staff together by
9 involving staff in the decision making process, and feeling
10 part of a team.

11 But apologizing must have been triggered by some
12 wrong doing on somebody's part.

13 MR. BRIGGS: I need to speak to that, Senator.

14 What had occurred is, I lost my temper. And in the
15 verbiage, I did get pretty harsh in some of the tone and in
16 some of the comments towards certain individuals who were in
17 the group. And I apologized for that, and I think that was
18 what kept the problem boiling for a while, because we did not
19 leave in the best of relationships at that point.

20 I should also mention, though, that I had met with
21 this group on prior occasions. This was not a one-time
22 episode. I had made a practice to go to problem areas and
23 talk to staff to see what we could resolve. And this
24 particular issue was set up by the union because they were
25 very concerned in C Facility about their peers receiving
26 punitive action or adverse actions, up to and including
27 firing, and they were upset at what was going on. I went
28

1 over to talk to them.

2 SENATOR MELLO: I'm a little confused, because he
3 apologized. He said he didn't hear you say anything --

4 MR. BORG: And I didn't.

5 SENATOR MELLO: -- and he did not apologize for
6 you, and now you say you apologized.

7 Is that the reason why he apologized?

8 MR. BRIGGS: Not at his meeting. I was not there.

9 I'm telling you what -- the apology was my demeanor
10 was wrong.

11 MR. BORG: No, you're making that as an assumption.

12 My apology had to do with, if this administration,
13 or Mr. Briggs as representative of this administration, did
14 something, you know, that was offensive to the staff, based
15 on what they had told me, then I apologized on behalf of the
16 administration. But since I don't know exactly what was
17 said, I couldn't make any set determination.

18 You evidently, Senator, don't understand how I
19 operate, and I don't expect you to in this short time. But I
20 don't have a problem apologizing to staff when I think that
21 there is, indeed, a problem here, one that I think that the
22 administration could have prevented and probably should have
23 prevented, and got out of hand. And so, I said: "On behalf
24 of the administration, I will apologize."

25 I think that it could have been handled better, and
26 Mr. Briggs and I discussed that.

27 SENATOR MELLO: But see, what I'm having trouble
28

1 with, and I apologize for keeping on this point --

2 [Laughter.]

3 SENATOR MELLO: I guess maybe I don't apologize
4 that easy. I think when somebody says, "If I did something
5 wrong, I apologize," that shows a sign of weakness.

6 MR. BORG: Well, maybe I'm weak, but I don't feel
7 I'm too weak.

8 CHAIRMAN ROBERTI: I don't know, Senator Mello. I
9 apologize all the time, my wife will tell you, even when I
10 don't think I'm wrong.

11 [Laughter.]

12 SENATOR MELLO: If you do something wrong, then I
13 think it takes a big person to recognize it and apologize.

14 MR. BORG: I think that's true, too.

15 SENATOR MELLO: Your statement is, you're saying if
16 we did something wrong, we're sorry and we apologize.

17 MR. BORG: Now, there was about an hour and a half
18 discussion that went on before any apology came out. And
19 based on everything I heard, I said, "That is not where this
20 administration comes from. You need to know that. And if
21 that's what was perceived, then I apologize for that, and
22 you're going to have to get with Mr. Briggs about the
23 particulars of what was said and wasn't said."

24 So, you may not agree with apologizing for a
25 perception, but I thought it was appropriate, and it seemed
26 to be pretty effective. I don't have a problem with doing
27 that. Whether that's weak or not, I can't tell you.
28

1 CHAIRMAN ROBERTI: At any rate, we're going to have
2 to put this over for one week, anyway, am I right? Or,
3 Senator Petris, have you changed your opinion?

4 SENATOR PETRIS: I'm glad we spoke to the Warden.
5 Maybe we can get that information another way. Maybe we can
6 request a letter from the author.

7 It seems to have been pulled back, and there's no
8 point going through an exercise on something that's been
9 pulled back or resolved.

10 I wonder if, through the Warden, we might request
11 that at least the author, as the shop steward, send us a
12 letter directed to Senator Roberti as Chair of the Committee,
13 explaining --

14 MR. BORG: Yes, sir.

15 SENATOR PETRIS: -- what that status is.

16 So, if that's satisfactory, then we can --

17 MR. BORG: The status of the grievance itself?

18 SENATOR PETRIS: Yes.

19 MR. BORG: We'll be glad to.

20 SENATOR PETRIS: Because what to me at the
21 beginning looked like a direct clash of what actually was
22 said. Now, and Lord knows, we can leave this meeting and get
23 different reports on what you said and what I said. That's
24 inevitable, unfortunately.

25 SENATOR MELLO: Mr. Chairman, I'd like to ask
26 Senator Petris.

27 I think if we're going to request this
28

1 information, if it does come back and contradicts the
2 testimony here today --

3 SENATOR PETRIS: Then we can look into it further.

4 SENATOR MELLO: If it's on the Floor, I'd rather
5 hold it here and not hold it up indefinitely, but have it
6 here.

7 SENATOR PETRIS: I have no objection to that, but
8 I'm trying to avoid another hearing on it.

9 CHAIRMAN ROBERTI: I do want to avoid a hearing.

10 What we'll do is, the staff should contact. See if
11 we can get a letter.

12 MS. MICHEL: Since the union representative is
13 here, maybe he could --

14 MR. MCHUGH: Gavin McHugh, CCPOA, the Association
15 representing the officers.

16 SENATOR PETRIS: May we have him come up,
17 Mr. Chairman?

18 CHAIRMAN ROBERTI: Yes, Mr. McHugh. He did
19 testify.

20 SENATOR PETRIS: While I was out, and I'm sorry.

21 SENATOR BEVERLY: He testified in support of the
22 nominee.

23 SENATOR PETRIS: Yes, that's what I understand.

24 MR. MCHUGH: Mr. Chairman, just basically, it was
25 resolved informally, as consistent with the way it was
26 described by Mr. Briggs and Mr. Borg.

27 We're not officially supporting the confirmation
28

1 because we generally don't. We're neutral, and the input
2 we're getting from the officers at Chuckawalla is that
3 Mr. Briggs is doing fine. Open door policy, good
4 communications.

5 SENATOR PETRIS: Maybe you can answer one question,
6 which you may have covered when I was out.

7 MR. MCHUGH: Sure.

8 SENATOR PETRIS: For which I apologize.

9 [Laughter.]

10 SENATOR PETRIS: Can you resolve for me this
11 conflict?

12 You've got a bunch of guys who wrote a letter
13 saying: John Doe over here said so-and-so. Mr. Doe comes in
14 and he says: I didn't say that.

15 Now, can you resolve that for me?

16 MR. MCHUGH: All I can do is just tell you what
17 I've heard.

18 Apparently there were several people involved in
19 signing the grievance who may not have been in this
20 particular meeting. And the way people talk, emotions run
21 high, maybe there's some miscommunication, misunderstanding.
22 And it took a while to get the situation resolved.

23 But I think the best thing we can do, Senator, is
24 have you talk to Mr. Wheaton, who actually wrote the
25 grievance. I can bring him to you, and you can sit down and
26 talk to him about it.

27 Would you be comfortable with that?
28

1 SENATOR PETRIS: Sure, that might be all right,
2 Mr. Chairman. We can avoid all the further delay and another
3 hearing. I'm not looking for another hearing unless it's
4 necessary.

5 CHAIRMAN ROBERTI: Why don't we just hold it up on
6 the Floor, then?

7 SENATOR PETRIS: Yes.

8 CHAIRMAN ROBERTI: Assuming he's confirmed, we'll
9 hold it up on the Floor pending proper information.

10 SENATOR BEVERLY: Then, if there's a problem, bring
11 it back.

12 CHAIRMAN ROBERTI: If there's a problem, we bring
13 the nomination back.

14 Senator Mello.

15 SENATOR MELLO: What I see is, if everything is
16 confirmed that was said here today, then there's no problem.
17 I'm willing to do that.

18 But if there is some testimony that's in conflict,
19 then is there a procedure where we can refer it back to the
20 Rules Committee for additional --

21 CHAIRMAN ROBERTI: Yes, I will make the motion
22 myself to refer the nomination back to the Committee if the
23 information we gather appears to be in conflict with the
24 testimony.

25 SENATOR PETRIS: Now, that doesn't resolve --

26 CHAIRMAN ROBERTI: And we'll hold the appointment
27 up for the normal two weeks that we always do.
28

1 SENATOR PETRIS: -- the complaint of the first
2 witness, which still stands, though.

3 Is that on the same subject?

4 MR. BRIGGS: No.

5 CHAIRMAN ROBERTI: A couple of other points as
6 well. He did introduce into the record testimony of
7 Mr. Corcoran, Officer Corcoran, who did indicate in the
8 record here that the problem over the introduction of
9 testimony, the complainants were to be penalized. That's
10 written as of June 6, 1990.

11 I would think it's just probably easiest also to
12 see if we could get Mr. Corcoran to come here, because he
13 obviously thinks it's current.

14 MS. MICHEL: Mr. Corcoran was here today. Since
15 the hearing was delayed, he had to leave to go to work. He
16 said if it were next week, he would be back.

17 CHAIRMAN ROBERTI: I would suggest we bring it all
18 up next week regarding this one point of information to the
19 Legislature, if that was to be penalized.

20 Mainly, it's our duty to hear all points of view.

21 MR. BORG: Mr. Chairman, I think he's talking about
22 this same incident in C Facility. That's the same one.

23 CHAIRMAN ROBERTI: Yes, he is, but the date of his
24 letter is June 6th, 1990, so I suspect we should ask Officer
25 Corcoran, since he did take the trouble to be here, what his
26 recollections are on that point.

27 MR. BORG: He was not there at C Facility.
28

1 CHAIRMAN ROBERTI: Right, I understand that.
2 Still, since he thinks it's current, I think it's important
3 to bring it up.

4 So, just on that one point only, we will take
5 testimony, but primarily we will try to get that testimony
6 between now and the hearing so that we can reduce the next
7 hearing to a vote only, at least with the one exception of
8 this one point of allegations of penalizing persons who want
9 to come before the Legislature.

10 Thank you very much.

11 The next appointment is Lonnie M. Carlson, Chief
12 Deputy Director, Department of Social Services.

13 MR. CARLSON: Senator Roberti, Members of the
14 Committee, I'd like to, if I could, give a brief overview of
15 my experience.

16 I've been with the State for 18 years. I started
17 out with the State as an analyst. Upon completion of law
18 school and passage of the Bar, I became a hearing officer,
19 where I conducted welfare hearings. During that capacity, I
20 conducted approximately 500 hearings.

21 I then had the opportunity to get into supervision
22 at the Assistant Chief Hearing Officer level. I then was
23 fortunate enough to be appointed to the Chief Administrative
24 Law Judge position in the Department, which was the first
25 time that that position had been filled at the Administrative
26 Law Judge level.

27 After that, I assumed the role of Chief Counsel of
28

1 the Department, which was the position that I fulfilled up
2 until my appointment as Chief Deputy Director of the
3 Department.

4 During my 18 years of experience, I feel that I
5 have been exposed to virtually all programs within the
6 Department. I've had the opportunity to work with other
7 departments, agencies, counties, legal aid societies, welfare
8 rights organizations, federal government, legislative staff,
9 and staff from the administration.

10 I feel that I'm credible. I'm easy to work with,
11 consistent, open, and decisive.

12 Thank you.

13 CHAIRMAN ROBERTI: Very good. Thank you,
14 Mr. Carlson.

15 Are there any questions? Senator Mello.

16 SENATOR MELLO: I want to pursue something. We
17 have some very interesting issues coming up which you and
18 your Department will play a leading role in, and that is, as
19 we get into the budget negotiations here, the administration
20 and the Governor are committed to repealing the COLAs, the
21 cost of living adjustments. As you know, the go to the aged,
22 blind, disabled, children, many other health programs, and of
23 course, the COLAs extend to schools and so forth.

24 These are all statutory COLAs that are now in
25 current law, and of course, he didn't include any of this in
26 his budget.

27 My question to you is, what's going to be your
28

1 position in recommending to the Governor on these COLAs?
2 Should they be repealed, or modified? Or, should they be
3 statutorily implemented as required by law?

4 MR. CARLSON: Well, to the extent that those are
5 statutorily required by law, then those will be implemented.
6 To the extent that there are any types of law changes that
7 would permit either their cancellation or relaxation for a
8 period of time, then we would follow that.

9 SENATOR MELLO: Let me ask you a question and be
10 more specific.

11 You've been there, what, about 18 years?

12 MR. CARLSON: Yes, sir, 18 years.

13 SENATOR MELLO: Let's take them one by one.

14 Aid to Families with Dependent Children, SSI, SSP,
15 Aid to the Aged, Blind, Disabled. Those are there by
16 statute.

17 MR. CARLSON: That's correct.

18 SENATOR MELLO: Is there any discretionary way to
19 modify them without the legislation removing that statutory
20 responsibility?

21 MR. CARLSON: Not that I'm aware of, Senator.

22 SENATOR MELLO: So, what would your recommendation
23 be to the administration as far as implementing it?

24 MR. CARLSON: In terms of recommending to the
25 administration, the only recommendation that I could give to
26 the administration would be to follow -- that there are laws;
27 the laws are there; the statutes are there.
28

1 There is little or no discretion as it relates to
2 the provision of COLAs in statute. Those have been there for
3 quite some time.

4 The only way of relaxing or affecting those would
5 be through some type of legislative reform.

6 SENATOR MELLO: What if there's no money, though?

7 MR. CARLSON: Pardon me?

8 SENATOR MELLO: What if there's no money?

9 MR. CARLSON: If there's no money?

10 SENATOR MELLO: Yes.

11 MR. CARLSON: Then we have significant problems
12 with compliance with the federal government and the provision
13 of services to, frankly, the people the Department is
14 supposed to be serving.

15 SENATOR MELLO: Do you feel these recipients will
16 suffer even greater hardship if COLAs are not implemented as
17 provided for by law?

18 MR. CARLSON: Well, I think, you know, fortunately
19 in California, I believe that people who have been on aid
20 have enjoyed a statutory process that gave them some
21 additional monies each year.

22 What we're faced with this year, and it's a
23 tremendous struggle, it's a tremendous problem, is not having
24 enough revenue to take care of all of the services that are
25 provided and mandated by statute. So, as a consequence of
26 that, not only do we, as administrators, but as members of
27 the administration and legislative staff, we've got some real
28

1 difficult decisions that have to be made on how we're going
2 to be able to continue to provide the level of services that
3 we have with substantially less money than what we've had
4 before.

5 SENATOR MELLO: Now, you indicated that people here
6 have enjoyed. I think, to use your words, the recipients
7 have enjoyed the fact that with the COLAs, they've gotten
8 some extra money. Maybe compared with other states.

9 But when you look at the standard of living, the
10 cost of living here in California, the high cost of housing,
11 I don't know how people make it on \$550 a month.

12 MR. CARLSON: Senator, I did use the word enjoy. I
13 meant that simply to be as a reflection of what the statute
14 provides for, without any other opportunity for other types
15 of reliefs, through legislation or whatever.

16 That's not to say that people who are receiving
17 benefits in California enjoy a standard of living is not
18 without hardship.

19 SENATOR MELLO: Well, I hope you take that into
20 consideration. I think this is a major issue, and I speak
21 just for myself and some of the Members of our caucus that
22 supported this law and put it into statute because we didn't
23 like the fact that people would deviate from what is really
24 is a below needed cost of living by these recipients, and now
25 the fact that the attitude of the administration is that, in
26 the first place, they didn't even fund the COLAs; number two,
27 are looking at ways of repealing them.
28

1 I just wonder the people, like in your Department,
2 or whether you and others, some here in the audience, really
3 understand what people go through who are on this type of
4 assistance, who have a legitimate claim to benefits.

5 I'm not talking only about women and children.
6 I'm talking about the blind, the aged, the disabled, and the
7 whole category of assistance. They can ill afford meeting
8 the high cost of housing, the high energy costs, food costs,
9 survival costs, and then if they fail to get a cost of living
10 increase this year, which would still be -- the energy bill
11 wipes out the increase, increased utilities; rent that's gone
12 up will wipe it out. They're really in jeopardy.

13 MR. CARLSON: Well, I think the positions that we
14 have taken have been taken, to a large degree, based on the
15 fact that we have a significant revenue problem in the state,
16 and that the largest part of the budget is taken up with the
17 provision of services. And that to the extent that we're
18 going to be able to come up with any monies that are going to
19 offset the shortfall, then you have to look at the services
20 area.

21 That's the reason why the proposals were tendered.
22 It was not to say that those people that are covered by those
23 services are not entitled to statutory COLAs, or anything
24 else. It was simply a recognition that we have a substantial
25 and significant problem in this state, and that is one of
26 offsetting the problem or dissipating the problem.

27 It's not to say that it is the perfect solution.
28

1 SENATOR MELLO: Thank you.

2 CHAIRMAN ROBERTI: Senator Petris.

3 SENATOR PETRIS: I can't help but comment that it
4 didn't seem to be a problem, and that's not your department,
5 of having this very high salary at the top administrators
6 working directly for the Governor be preserved, what was it,
7 a year or two years after they left, when they returned to
8 the Civil Service list. Just a matter of basic inequity
9 there.

10 I know the others aren't employees, but we're
11 looking at need. The need at that level, as described by
12 Senator Mello, is a lot greater than the need of the others
13 that are way up there in salary levels. It just came out as
14 a patently unfair way to treat people.

15 MR. CARLSON: Senator, in my brief statement about
16 my qualifications, I alluded to the fact that I was a hearing
17 office and conducted over 500 hearings involving welfare
18 recipients.

19 I am very familiar, on a first-hand basis, of the
20 problems and circumstances that those people are faced with.
21 And I have, over the years, maintained what I feel are good,
22 open relationships with legal aid societies and welfare
23 rights organizations. I've provided them training. I've
24 almost maintained constant communication.

25 I am highly sensitive to the problems that those
26 people face.

27 SENATOR PETRIS: I'm sure of that. The problem
28

1 is, you don't make policy though. Maybe you should get a
2 bigger share of policy making.

3 CHAIRMAN ROBERTI: Any opposition in the audience?
4 Senator Beverly.

5 SENATOR BEVERLY: Move the approval of the
6 confirmation.

7 CHAIRMAN ROBERTI: Senator Beverly moves Lonnie
8 Carlson's confirmation as Chief Deputy Director be
9 recommended to the Floor.

10 Secretary, call the roll.

11 SECRETARY WEBB: Senator Beverly.

12 SENATOR BEVERLY: Aye.

13 SECRETARY WEBB: Senator Mello.

14 SENATOR MELLO: Aye.

15 SECRETARY WEBB: Senator Petris.

16 SENATOR PETRIS: Aye.

17 SECRETARY WEBB: Senator Craven. Senator Roberti.

18 CHAIRMAN ROBERTI: Aye.

19 The vote is four to nothing; confirmation's
20 recommended to the Floor.

21 MR. CARLSON: Thank you very much.

22 CHAIRMAN ROBERTI: The next appointment is Donald
23 R. Irwin, Director of the Office of Emergency Services.

24 Mr. Irwin, we'll ask you why you feel you're
25 qualified to assume this position?

26 MR. IRWIN: Thank you, sir.

27 I have been with the Office of Emergency Services
28

1 since February 1st, 1965. I was hired as a communications
2 coordinator.

3 CHAIRMAN ROBERTI: So you're not a political
4 appointment.

5 MR. IRWIN: No, sir, a little over 25 years.

6 As a communications coordinator, I was responsible
7 for working with other staff members in the development of
8 the various communications systems that we have in the state:
9 the law enforcement communications systems, fire nets, and
10 what have you.

11 I worked as a coordinator through March of 1970,
12 when I was appointed as a senior communications coordinator.
13 And then in 1978, I was moved into the position of Chief of
14 the Emergency Management Division, and this is the division
15 that is responsible for coordinating the movement of funds to
16 support the disaster operations that occur within the state.

17 I served in that position through 1981, when I
18 became an Assistant Director for the Office of Emergency
19 Services. In 1983, I was appointed as a Deputy Director, and
20 then in March of this year, with the departure of Bill
21 Medigovich to take the position of the Region 9 Director for
22 FEMA, I became the Director on a Governor's appointment.

23 From 1978, when I went into the Emergency
24 Management Division, up to the present time, I've served as
25 the -- well, up until I was appointed as Director -- I served
26 as a Deputy State Coordinating Officer and also as a Deputy
27 Governor's authorized representative on every disaster that
28

1 occurred during that period.

2 I feel that I have thorough knowledge of the
3 programs, and I feel that I'm well qualified for the job.

4 CHAIRMAN ROBERTI: Very good.

5 Are there any questions? Senator Mello.

6 SENATOR MELLO: Mr. Chairman, of course, the Loma
7 Prieta earthquake centered in Santa Cruz County and did
8 extend into Alameda County, from Senator Petris' district.

9 I haven't had time to fully research, but we are
10 having ongoing problems with FEMA in several colleges,
11 hospitals, and other local facilities. And we get the
12 feedback that some of the reason they're being delayed is
13 OES, the Department which you are heading up, has to sign off
14 on these programs. And this has been an awful delay until
15 now.

16 I'm getting screamed at by people all over my
17 district, and I've even gone to Senator Campbell, former-
18 Senator Campbell and Jerry Haliva, who worked, as you know,
19 with Emergency Services, to try to get some help.

20 But my experience right now, dealing with FEMA,
21 it's as much a disaster as the Loma Prieta earthquake.

22 MR. IRWIN: Well, actually --

23 SENATOR MELLO: I don't know if your Department is
24 really helping out a heck of a lot.

25 MR. IRWIN: We're doing the best we can.

26 SENATOR MELLO: Yes, but you should be there as an
27 advocate of the State of California.
28

1 MR. IRWIN: We are.

2 SENATOR MELLO: It's the most tragic disaster we've
3 had in the history of the world.

4 MR. IRWIN: We have -- at the present time, we have
5 660 public agencies and private nonprofits that have applied
6 for funds.

7 In the educational area, we're having a lot of
8 trouble getting the federal Department of Education to move
9 the money. They came out, and they've done the estimates as
10 recently as a month ago, and we're still having problems.
11 The Governor has written to them twice, urging them to start
12 moving the funds to the schools.

13 We have a problem in San Francisco. FEMA is
14 providing funds for the nonacademic portions of the schools
15 that were damaged, but it's up to the Department of Education
16 and their funds, and they just won't release them. That's
17 one small area.

18 It's not FEMA. It's the U.S. Department of
19 Education.

20 SENATOR MELLO: Another thing that they're doing
21 also, FEMA and, I think, OES is much a part of it, in one of
22 my colleges, one project alone was \$120,000 to make some
23 restoration of some of the utilities there.

24 FEMA comes along and says they can do it for
25 \$6,000. I mean, here the college is going out and getting
26 bids --

27 MR. IRWIN: That's right.
28

1 SENATOR MELLO: -- from licensed contractors, and
2 they want to beat them down to \$6,000.

3 If they can beat them down, if the local entity's
4 out of line trying to rip off the government, then I say they
5 should be brought to. But in this case, they have looked at
6 six or seven bids, all from 120,000 on up, and FEMA will only
7 allow them \$6,000.

8 MR. IRWIN: What FEMA does, they send the engineers
9 in to do the damage survey reports, which is really a bill of
10 particulars that says this is what it's going to cost to make
11 the repairs.

12 Those damage survey reports go back to the FEMA
13 engineers. FEMA makes a review of them and will normally
14 sign off on them. If they feel that the bill of particulars
15 is too high, they may reduce that amount.

16 SENATOR MELLO: Too high compared to what? The
17 State of Georgia, Mississippi?

18 MR. IRWIN: This is probably -- this actually is
19 one of the problems. You have engineers coming out of other
20 states that are brought in by FEMA who say, "Hey, wait a
21 minute. You tell me it's going to cost \$7 dollars a yard to
22 put this material in place. In Georgia, we do it for 3½."
23 And he puts down 3½.

24 SENATOR MELLO: I'm really interested in your role.
25 What do you do?

26 MR. IRWIN: What happens, we are the ones that deal
27 with the appeal process. We work with the local governments.
28

1 When they come back and they say it's -- they
2 didn't allow enough money for this, we send the engineers in
3 from the state to look at the job. Then they work with the
4 local government to do the appeal process.

5 Now, there are a number of these things that are
6 occurring, as you well know, in your area and in the San
7 Francisco Bay Area that we have scheduled two meetings this
8 week and two next week to deal with these issues with the
9 applicants to get them in and say, "Look, we've got to get
10 these appeals moving. You need to -- you know, they came
11 back to you and said that this is what we're going to allow
12 you."

13 And at this point, a lot of them are not doing
14 anything about it. They're calling your office; they're
15 calling over here.

16 So, what we're doing is getting meetings with the
17 applicants this week and next week -- two this week, two next
18 week -- to get those applicants together and talk about the
19 appeal process and how they have to go through it.

20 SENATOR MELLO: Let me ask you more specifically,
21 what's the status of the settlement of the claims from
22 Coalinga since 1983?

23 MR. IRWIN: Oh, I'd have to go back and check
24 records on that.

25 SENATOR MELLO: Have they all been paid, or
26 resolved, or not?

27 MR. IRWIN: I think the Coalinga issue is closed
28

1 now, I think.

2 But let me go one step farther.

3 SENATOR MELLO: What about Whittier?

4 MR. IRWIN: We closed the 1971 earthquake last
5 year.

6 SENATOR MELLO: You're getting my point now.

7 Monterey County, that I represent, asked me to
8 introduce a bill to require that these claims be either paid
9 or rejected within, say, two years, which I think is a long
10 time.

11 What I'm pointing out here to the Rules Committee
12 is that around the State of California, from other disasters
13 and including the ones in my area, we have still not resolved
14 '83, with floods and earthquakes, and the Coalinga incident,
15 Whittier.

16 Our counties are broke. They just cannot go on for
17 two or three years waiting for FEMA and OES to make up their
18 minds.

19 MR. IRWIN: It's not OES. We're working with the
20 communities to get these things resolved.

21 What happens, FEMA will pay, if it's an approved
22 project, FEMA will pay 75 percent of 75 percent. It comes
23 out to about 56 percent.

24 They will not get the rest of the money until after
25 the final audit. So, after all the work is done, and after
26 the final inspection of the work that says, "Yes, the work is
27 done," they they apply for the final money.
28

1 What we're doing now is getting FEMA to move up to
2 90 percent of the 75 percent. And on that basis, we're
3 moving the State money as fast as we can from the Natural
4 Disaster Assistance Act.

5 In other words, we're advancing money. We started
6 out in the very beginning, when the Governor authorized the
7 \$17 million, and we've also asked for another 2 million for
8 Santa Cruz County based on the new damage assessments they
9 have, that will be advances against the work to be completed
10 on the State's side.

11 SENATOR MELLO: I just want to point out to the
12 Rules Committee here that there are some real problems in the
13 State of California. They're ongoing and haven't been
14 improved by any administration that I'm aware of.

15 And OES is an important entity for the State. You
16 are the ones that have to approve. You're the appeal agency,
17 and you get these moving. You're saying we're talking with
18 them --

19 MR. IRWIN: FEMA has to approve. On the federal
20 side, FEMA has to approve it.

21 Once they approve the application and the DSRs,
22 then the State, because our money is tied to the State funds,
23 so once FEMA identifies that, then we have some State dollars
24 we can move for the other 25 percent.

25 SENATOR MELLO: What I would like to propose to the
26 Chairman, Mr. Chairman, if I may, I don't want to hold up
27 Mr. Irwin's confirmation from going to the Floor, because I
28

1 think he's been there a long time and is earnestly interested
2 in trying to resolve it.

3 What I would like to do is ask the Chairman if we
4 could hold this up.

5 Your date is March of '91 of next year. You serve
6 at the pleasure of the Governor, but we don't have to do this
7 in two weeks.

8 If we could hold it up until four weeks, or the
9 first week in August, I want to survey all those entities and
10 get an update on all of the issues they've been bringing to
11 my attention, and have a chance to discuss them with you
12 before we act formally on the Floor for your confirmation.

13 I've been back to Washington arguing with FEMA back
14 there. You can hardly get to talk to them.

15 I feel that you have to be an advocate for the
16 State of California and the clients that I have.

17 I just want to see what unresolved problems we have
18 so I can hope to get some help on them.

19 CHAIRMAN ROBERTI: I'd recommend putting it over
20 for a couple weeks, but four weeks is a long time.

21 SENATOR MELLO: Well, Mr. Chairman, let me ask
22 you, how long is it when they wait for their claims for ten
23 years to get paid back money that they're entitled to by law?
24 I mean, that's what I'm griping about here.

25 Whatever you want to do.

26 MR. IRWIN: Senator Mello, you're discussing about
27 going back to FEMA and talking to them is exactly the reason
28

1 the Stafford Act was written last year, to try and expedite
2 this process.

3 They are moving much faster than they have been in
4 past disasters.

5 SENATOR MELLO: But they're still --

6 MR. IRWIN: But it's still got to be done.

7 SENATOR MELLO: It's up to you, Mr. Chairman. I'm
8 requesting a minimum of four weeks, and if I see that there's
9 a lot of outstanding claims, I may come to you and ask more.

10 His appointment runs with the Governor. I don't
11 see why we should rush out and have to do it as long as
12 there's some unresolved issues here.

13 I have plenty in my area. When they come down and
14 beat down a college, a community college, who went out to get
15 bids for \$120,000 -- not him, but FEMA, but he works with
16 them -- and they try to say --

17 MR. IRWIN: I'm sorry, I work for the State.

18 SENATOR MELLO: -- it's \$6,000, giving them 6,000
19 for 120,000 with valid contractors is outrageous. So who do
20 they turn to? Their Senator.

21 SENATOR PETRIS: Why don't we hold it on the Floor.
22 You're talking about the Floor?

23 SENATOR MELLO: That's what I'm saying.

24 CHAIRMAN ROBERTI: My recommendation, if it's all
25 right, is to put it out and hold it on the Floor so you can
26 get the information.

27 SENATOR MELLO: All right, fine with me.
28

1 CHAIRMAN ROBERTI: Is there any discussion or
2 debate? Any opposition in the audience?

3 SENATOR BEVERLY: Move approval of the
4 confirmation.

5 CHAIRMAN ROBERTI: Senator Beverly moves the
6 appointment.

7 Secretary will call the roll.

8 SECRETARY WEBB: Senator Beverly.

9 SENATOR BEVERLY: Aye.

10 SECRETARY WEBB: Senator Mello.

11 SENATOR MELLO: Aye.

12 SECRETARY WEBB: Senator Petris.

13 SENATOR PETRIS: Aye.

14 SECRETARY WEBB: Senator Craven. Senator Roberti.

15 CHAIRMAN ROBERTI: Aye.

16 The vote is four to zero; confirmation is
17 recommended to the Floor.

18 SENATOR PETRIS: Mr. Chairman, I have a limited
19 experience with FEMA, whose people went out and checked this
20 building and said, "You don't need all this stuff. Cosmetic
21 repairs is all you need." Then further study by additional
22 people indicated the building was so bad, they have to tear
23 it down. They can't even rebuild it. And FEMA engineers are
24 talking cosmetics only.

25 MR. IRWIN: That's right.

26 SENATOR PETRIS: That's outrageous.

27 I have to go along with what Senator Mello says. I
28

1 don't know where they get these people. I don't even know if
2 they're engineers.

3 MR. IRWIN: Well, a lot of the engineers they use
4 are from the Corps of Engineers that they bring in. But they
5 also bring in what they call reservist engineers, too, and I
6 don't know where they come from. They make up the pool.

7 SENATOR PETRIS: Not too good.

8 MR. IRWIN: But that's the reason we have a high
9 appeal rate.

10 SENATOR PETRIS: Yes. Thank you.

11 MR. IRWIN: Thank you.

12 CHAIRMAN ROBERTI: The next appointment is Jerome
13 F. Lipp, California Transportation Commission.

14 MR. LIPP: Senators, my name is Jerome F. Lipp.

15 CHAIRMAN ROBERTI: Mr. Lipp, we'll ask you what we
16 ask all the Governor's Appointees, and that's why you feel
17 you are qualified to assume this position.

18 MR. LIPP: Senator, my first job out of school was
19 working for the Department of Transportation in Marysville.

20 Since then, I've -- in my working career before my
21 retirement a few years ago, I had an opportunity to work most
22 of the major metropolitan areas of the State of California
23 and became intimately familiar with the needs of
24 transportation.

25 I was not, Senator Mello, involved with Chuckawalla
26 at all. I've never visited that part of the State of
27 California.
28

[Laughter.]

CHAIRMAN ROBERTI: We'll probably be needing a road out there one of these days.

MR. LIPP: We probably will, Senator.

I've been privileged to serve the people of the state in various public capacities. I've always been interested in transportation work, and I had time available that I would enjoy contributing whatever talent I might have to the California Transportation Commission.

CHAIRMAN ROBERTI: Are there any questions of Mr. Lipp?

SENATOR PETRIS: Is this a fixed term until '94?

MR. LIPP: That's correct.

SENATOR PETRIS: You're just finishing up somebody else's term?

MR. LIPP: I did originally finish up Assemblyman Bagley's term, Senator, but was reappointed -- that expired February 1st, if I recall, and the Governor has since reappointed me for the four-year term subject to ratification.

SENATOR PETRIS: Are you familiar with some of the hassles we've had from time to time relating to one of your fellow Commissioners, Handley, gravel and asphalt people?

MR. LIPP: No, sir, I'm not familiar with any hassles.

SENATOR PETRIS: There've been some allegations about conflict of interest relating to property owned by the

1 Commissioner.

2 MR. LIPP: I was not familiar with any of that. I
3 know Margie Handley, but no, I was not familiar.

4 My first meeting sitting in was December of last
5 year.

6 SENATOR PETRIS: Do you think the Commission is
7 well balanced? Some people say it's weighted too heavily in
8 the direction of developers.

9 You're not a developer. You came out of retail.

10 MR. LIPP: Well, I'm afraid I'm also guilty of
11 doing some development work, because my work in retail was
12 that of President of the Real Estate Division of Carter
13 Hawley Hale, who is a major retailer.

14 But I developed things like Sunrise Center, and El
15 Dorado Hills. And I was in charge of the Redevelopment
16 Agency of the City of Sacramento, and I'm afraid I'm guilty
17 of putting in Crocker Bank and Wells Fargo, and IBM, and
18 Macy's, and the apartments now on the west end of Sacramento.
19 So, to that extent --

20 SENATOR PETRIS: That's fine. I have no objection
21 to that.

22 The question is, if it happens to affect your own
23 property, which might jump in value, what would you do?
24 Would you disqualify yourself?

25 MR. LIPP: Absolutely. If you can't be like
26 Caesar's wife in the public trust, then you don't deserve to
27 be in a public position.
28

1 SENATOR PETRIS: Okay, fine.

2 Thank you, Mr. Chairman.

3 CHAIRMAN ROBERTI: Any other questions? Any
4 opposition in the audience?

5 SENATOR BEVERLY: Move approval of the
6 confirmation.

7 CHAIRMAN ROBERTI: Senator Beverly moves the
8 confirmation be recommended to the Floor.

9 Secretary, call the roll.

10 SECRETARY WEBB: Senator Beverly.

11 SENATOR BEVERLY: Aye.

12 SECRETARY WEBB: Senator Mello.

13 SENATOR MELLO: Aye.

14 SECRETARY WEBB: Senator Petris.

15 SENATOR PETRIS: Aye.

16 SECRETARY WEBB: Senator Craven. Senator Roberti.

17 CHAIRMAN ROBERTI: Aye.

18 The vote is four to zero; confirmation is
19 recommended to the Floor.

20 MR. LIPP: Thank you, gentlemen.

21 CHAIRMAN ROBERTI: Paul Robert Neel, appointed as
22 State Architect.

23 MR. NEEL: Senators, I'm Paul Neel, State
24 Architect.

25 CHAIRMAN ROBERTI: Yes.

26 MR. NEEL: I will do as you've asked the others.
27 If you'll indulge me for about 92 seconds, I wish
28

1 to review my qualifications by affiliation, position, and
2 achievement, if there has been any.

3 I've been at Cal Poly as a Professor for 27 years.
4 During that time, I was the Director of the program in
5 Architecture. And the achievement was that it grew during my
6 11 years as the Director into one of the largest and most
7 respected schools in the United States.

8 Also during my time at Cal Poly, I took a leave and
9 worked for the State Department, developing educational
10 facilities for the World Bank and AID in Guatemala and
11 Honduras, and developed three educational facilities for
12 technical agriculture for the World Bank, and they have been
13 completed.

14 I have a specialty in earthquake and building
15 behavior. I'm noted throughout the country for that and have
16 testified in a number of hearings on that subject.

17 And my professional affiliations, I've been the
18 California Council AIA President in 1983, and I was on the
19 National AIA Board for three years, during which time I
20 authored the educational initiative for Schools of
21 Architecture in the U.S. and it is now the standard for the
22 National Accreditation Board, which is the national board
23 that gives accreditation to those schools.

24 In reference to my state affiliation, I'm presently
25 or just have been the California Board of Architectural
26 Examiners' President. That's a Governor's appointment. I
27 was the President for three years, during which time I put
28

1 into place the national reciprocity system, which affords
2 architects the opportunity to practice in California, and our
3 architects to practice elsewhere. And also have put into
4 place citation authority in the Board of Architectural
5 Examiners.

6 I'm a member of the CCAIA's response team in
7 earthquakes. I've led response teams to Whittier, Coalinga,
8 Mexico City, Santa Cruz, and San Francisco. And with that
9 affiliation, I've led design assistance teams to those cities
10 and provided planning alternatives for reconstruction of
11 those cities by a team of architects which volunteers their
12 efforts. And for that, I've received a commendation from
13 President Reagan and the Governor, George Deukmejian.

14 I have brought one of the books that we published,
15 and this is current because it was a workshop that I led in
16 Santa Cruz, and I brought this for Senator Mello. That's
17 published by the CCAIA, and it's about your city of Santa
18 Cruz, and what we've planned for the alternatives, planning
19 alternatives.

20 I believe my qualifications speak for themselves.
21 I'm a licensed architect in California, have been licensed
22 for almost 30 years, and I am a member of the College of
23 Fellows of the American Institute of Architects.

24 I have the support of the profession, contractors,
25 and engineers in California.

26 CHAIRMAN ROBERTI: Very good.

27 Are there any questions? Senator Petris.
28

1 SENATOR PETRIS: Do you bring a book for me?

2 [Laughter.]

3 MR. NEEL: I haven't.

4 SENATOR PETRIS: We have a State building in
5 Oakland that was built in 1960 or '61. I thought it was up
6 to the latest standards, and it's closed down and is never
7 going to be used again, apparently, the Oakland State
8 Building.

9 Do you have any information on that?

10 MR. NEEL: I certainly do.

11 I issued the memo to close the building because of
12 its continued deterioration, and it was built in 1957. Since
13 that time --

14 SENATOR PETRIS: Was it '57?

15 MR. NEEL: It was '57.

16 Since that time, we've had four major earthquakes
17 on the North American Continent, and the technology's
18 improved quite a bit.

19 We evacuated the building right after the Loma
20 Prieta earthquake because it had 50 percent of its needed
21 lateral stability, and since that time, there have been
22 clusters of earthquakes, and it's now down to 20 percent. I
23 sent a team down to investigate the building, and we decided
24 to close it permanently..

25 SENATOR PETRIS: No way that's going to be used.

26 MR. NEEL: No.
27
28

1 SENATOR PETRIS: I wanted the Members to know that,
2 because I was forced to move out into quarters that are much
3 more expensive than what we had before. I can't find any
4 other place.

5 I wish Mr. Berg were here to hear that.

6 San Francisco had a similar problem; didn't it?

7 MR. NEEL: San Francisco, we have about 600,000
8 square feet of unoccupied space because of the earthquake.

9 Luckily, since about midnight last night, we will
10 have the bonding funds to repair those buildings.

11 SENATOR PETRIS: But the one in Oakland is not
12 repairable. Does that mean there's going to be a new one
13 built, or what?

14 MR. NEEL: That's our plan, sir.

15 Senator, we do plan to work with the City of
16 Oakland in the Site 1, down at the Civic Center, to build a
17 new building.

18 SENATOR PETRIS: Build one there?

19 MR. NEEL: Yes.

20 And you'll have a much better office than you had
21 before. I guarantee that.

22 SENATOR PETRIS: If I'm around that long.

23 MR. NEEL: That's true.

24 SENATOR PETRIS: Thank you.

25 MR. NEEL: You bet.

26 CHAIRMAN ROBERTI: Any other questions? Is there
27 any opposition in the audience?
28

1 SENATOR BEVERLY: Move approval of the
2 confirmation.

3 CHAIRMAN ROBERTI: Senator Beverly moves the
4 confirmation be recommended to the Floor.

5 Secretary, call the roll.

6 SECRETARY WEBB: Senator Beverly.

7 SENATOR BEVERLY: Aye.

8 SECRETARY WEBB: Senator Mello.

9 SENATOR MELLO: Aye.

10 SECRETARY WEBB: Senator Petris.

11 SENATOR PETRIS: Aye.

12 SECRETARY WEBB: Senator Craven. Senator Roberti.

13 CHAIRMAN ROBERTI: Aye.

14 Vote's four to nothing; confirmation is recommended
15 to the Floor.

16 Congratulations.

17 MR. NEEL: Thank you, Senators.

18 [Thereupon this portion of the
19 Senate Rules Committee hearing
20 was terminated at approximately
21 5:10 P.M.]

22
23 --oo0oo--
24
25
26
27
28

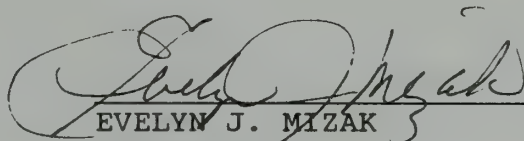
CERTIFICATE OF SHORTHAND REPORTER

I, EVELYN J. MIZAK, a Shorthand Reporter of the State of California, do hereby certify:

That I am a disinterested person herein; that the foregoing Senate Rules Committee hearing was reported verbatim in shorthand by me, Evelyn Mizak, and thereafter transcribed into typewriting.

I further certify that I am not of counsel or attorney for any of the parties to said hearing, nor in any way interested in the outcome of said hearing.

IN WITNESS WHEREOF, I have hereunto set my hand this 8th day of June, 1990.


EVELYN J. MIZAK
Shorthand Reporter

500
29
990
no. 19

HEARING
SENATE RULES COMMITTEE
STATE OF CALIFORNIA



DOCUMENTS DEPT.

JUL 3 1990

SAN FRANCISCO
PUBLIC LIBRARY

STATE CAPITOL
ROOM 113
SACRAMENTO, CALIFORNIA

WEDNESDAY, JUNE 13, 1990
2:15 P.M.

Additional copies of this publication may be purchased for \$4.00 per copy from:

Joint Publications
State Capitol, Box 942849
Sacramento, CA 94249-0001

Please add California sales tax. Make checks payable to STATE OF CALIFORNIA.

1 SENATE RULES COMMITTEE
2 STATE OF CALIFORNIA
3
4
5
6
7
8

9 STATE CAPITOL
10 ROOM 3191
11 SACRAMENTO, CALIFORNIA
12
13
14

15 WEDNESDAY, JUNE 13, 1990
16 2:15 P.M.
17
18
19
20
21
22

23 Reported by:
24
25

26 Evelyn J. Mizak
27 Shorthand Reporter
28

APPEARANCES

MEMBERS PRESENT

SENATOR DAVID ROBERTI, Chairman

SENATOR ROBERT BEVERLY

SENATOR HENRY MELLO

SENATOR NICHOLAS PETRIS

MEMBERS ABSENT

SENATOR WILLIAM CRAVEN, Vice Chairman

STAFF PRESENT

CLIFF BERG, Executive Officer

GINA KENDRICK, Acting Committee Secretary

RICK ROLLENS, Consultant on Bill Referrals

NANCY MICHEL, Consultant on Governor's Appointments

ALSO PRESENT

JOHN T. LA FOLLETTE, Member
California Horse Racing Board

JAMES T. RUDE, Member
Industrial Welfare Commission

TOM RANKIN, Director of Research
California Labor Federation, AFL-CIO

BETH CAPELL, Legislative Advocate
California Nurses Association

INDEX

	<u>Page</u>
Proceedings	1
<u>Governor's Appointees:</u>	
JOHN T. LA FOLLETTE, Member California Horse Racing Board	1
Motion	1
Committee Action	2
JAMES T. RUDE, Member Industrial Welfare Commission	3
<u>Witnesses in Opposition:</u>	
TOM RANKIN, Director of Research California Labor Federation, AFL-CIO	3
Vote Against Increase in Minimum Wage	4
Vote in Favor of 12-Hour Day	4
Support for Tip Credit	4
Vote to Extend 12-Hour Day to Other Industries	5
BETH CAPELL, Legislative Advocate California Nurses Association	5
Refusal to Vote for 8-hour Day	5
Response by MR. RUDE	6
Statement by CHAIRMAN ROBERTI re:	
Obligation of Employer Representative	7
Questions by SENATOR PETRIS re:	
Employee Representatives on Commission	8
Jurisdiction of Commission over All Workers in State	9
Representatives of Organized Labor	9
Vote on 12-hour Day	10

INDEX (CONTINUED)

1		
2	Request for Labor Representatives to Respond	10
3	Response by MR. RANKIN	10
4	Resignation of DAVID PADILLA	11
5	Changing of Agricultural Orders on Initiative of Commission	12
6		
7	Reason for Affirmative Vote on 12-hour Day	12
8	Supervision of Employee Elections	13
9	Response by MS. CAPELL	14
10	Statement by CHAIRMAN ROBERTI re:	
11	Confirmation of Employer Representative to Commission	15
12	Response by MR. RANKIN	15
13	Necessity for Accommodation	16
14	Lack of Research	16
15	Statement by SENATOR MELLO re:	
16	Appointees to Commission All Appointed by Current Administration	17
17		
18	Vote of Appointee vs. Entire Commission	18
19	Questions by SENATOR MELLO re:	
20	Vote on Minimum Wage	18
21	Living Standards under Minimum Wage	19
22	Response to Illegal Sweatshops	20
23	Number of Complaints & Convictions	20
24	Questions by SENATOR PETRIS re:	
25	Employers Testifying Against Raising Minimum Raise	21
26		
27	Response by MR. RANKIN re:	
28	Increased Employment in California After Raise in Minimum Wage	22

INDEX (CONTINUED)

1		
2	Response of Major Companies	22
3	Overtime Pay after 8 Hours	23
4	Questions by CHAIRMAN ROBERTI re:	
5	Looking Out for All Workers by Vote on Minimum Wage Increase	25
6	Impact on Current Employees	25
7	Statements by SENATOR MELLO re:	
8	Tough Issue of Minimum Wage	26
9	Statements by SENATOR PETRIS re:	
10	White House Leading Fight Against Increase in Minimum Wage	27
11		
12	Gap between Average Pay and Pay of Top Executives in American Corporations	27
13		
14	Suspicious of Moves away from Traditional Protections to Workers	28
15	Questions by SENATOR PETRIS re:	
16	Latest Petition in Agricultural Area	28
17	Statement by SENATOR BEVERLY re: Motion	29
18	Request to Hold Over Confirmation	30
19	Committee Action	30
20	Statements by CHAIRMAN ROBERTI re:	
21	Necessity for Representative of Small Business on Commission	30
22		
23	Termination of Proceedings	31
24	Certificate of Reporter	32
25		
26		
27		
28		

P-R-O-C-E-E-D-I-N-G-S

--oo0oo--

CHAIRMAN ROBERTI: Next is Governor's Appointees appearing today, Mr. John T. La Follette, Member of the California Horse Racing Board.

MR. LA FOLLETTE: Good afternoon, Senators.

CHAIRMAN ROBERTI: Good afternoon.

Mr. La Follette, we'll ask you what we ask all the Governor's Appointees, and that is why you feel you're qualified to assume this position.

MR. LA FOLLETTE: Well, I've been a serious student of the horse racing industry and sport in California for a number of years. I've been a member of the California Thoroughbred Breeders' Association for more than 20 years.

I've attended a number of seminars and lectures involving the industry-sport. I'm a serious student of the industry, sir.

CHAIRMAN ROBERTI: Very good.

I'd like to note that Assemblywoman La Follette is in the audience, for whom we have a high regard, and I suspect she may be in support of this appointment.

ASSEMBLYWOMAN LA FOLLETTE: I just thought if you needed a character witness.

[Laughter.]

CHAIRMAN ROBERTI: One never knows.

Are there any questions?

SENATOR MELLO: Move the recommendation to the Floor.

1 CHAIRMAN ROBERTI: Senator Mello moves the
2 recommendation to the Floor.

3 Is there any discussion or debate? Is there any
4 opposition?

5 I think you're going to get off easy on this one.

6 SENATOR BEVERLY: I'd like to observe, Mr. Chairman,
7 I've known Mr. La Follette. I know him as an able lawyer and a
8 very good man.

9 MR. LA FOLLETTE: Thank you, Senator.

10 CHAIRMAN ROBERTI: Secretary, call the roll.

11 SECRETARY KENDRICK: Senator Beverly.

12 SENATOR BEVERLY: Aye.

13 SECRETARY KENDRICK: Senator Mello.

14 SENATOR MELLO: Aye.

15 SECRETARY KENDRICK: Senator Petris.

16 SENATOR PETRIS: Aye.

17 SECRETARY KENDRICK: Senator Craven. Senator
18 Roberti.

19 CHAIRMAN ROBERTI: Aye.

20 The vote is four to zero; the recommendation is made
21 to the Floor.

22 Thank you, Mr. La Follette.

23 MR. LA FOLLETTE: Thank you, Senators.

24 CHAIRMAN ROBERTI: The next appointment is James T.
25 Rude, Member of the Industrial Welfare Commission.

26 Mr. Rude, we'll ask you what we ask all the
27 Governor's Appointees, and that is why you feel you're qualified
28

1 to assume this position?

2 MR. RUDE: Okay.

3 Well, I've been on the Commission since 1984, and my
4 job involves working in human resources, working on the issues
5 that the Commission addresses.

6 And because of that background, I feel I can
7 contribute to the issues the Commission addresses.

8 CHAIRMAN ROBERTI: Why don't we do this. On Monday,
9 we heard some opposition to the appointment, so why don't we ask
10 the opposition to come forward.

11 MR. RANKIN: Tom Rankin, representing the California
12 Labor Federation.

13 We are opposing Mr. Rude based on his record as a
14 Commissioner since 1984. We understand that he is appointed
15 there as an employer representative, but there are certain
16 guidelines in the statute and in the purpose of the Commission
17 which we believe bind both employer, labor, and public members
18 of the IWC.

19 Basically, the IWC is set up to look after the
20 welfare of the unrepresented workers, and it's supposed to be,
21 in essence, their guardian. There are some standards in the
22 statute that it's supposed to use when it considers minimum wage
23 increases and changes in hours and working conditions in the
24 orders.

25 The minimum wage is supposed to be able to provide a
26 worker with the necessary cost of proper living. Hours and
27 working conditions are supposed to be -- are not supposed to be
28

1 changed where it's detrimental to the employees, or, as the
2 statute says, prejudicial to their health and welfare.

3 Mr. Rude's votes, I think, have shown that these
4 standards have not been applied by him. In 1985, he voted
5 against an increase in the minimum wage. The minimum wage had
6 not been increased since 1981 at that time.

7 CHAIRMAN ROBERTI: What did you say?

8 MR. RANKIN: In 1985, he voted against an increase in
9 the minimum wage, which at that time had not been increased
10 since 1981.

11 The statute provides for a review of the minimum wage
12 every two years.

13 In 1986, he voted for a 12-hour day in the hospitals
14 with practically no protections for the workers. The
15 Legislature subsequently added some protections.

16 In 1987, he voted again against an increase in the
17 minimum wage, although it passed over his no vote. At that
18 time, the minimum wage was going to go into effect or did go
19 into effect July, 1988. That meant that it had not been
20 increased for 7½ years. Prior to this time, it had never gone
21 that long since the 1930s before the minimum wage had been
22 increased.

23 He also supported at that time a tip credit. We were
24 required to take that tip credit provision, which did pass, to
25 court, and we were upheld in the Supreme Court, and we saw that
26 basically as an attempt by the IWC to circumvent a statute that
27 was passed in 1975 by the Legislature which prohibited tip
28

1 credits against the minimum wage.

2 Then, subsequent to that, he voted for four -- on
3 four more wage orders to extend the 12-hour day to office
4 employees, to public housekeeping employees which cover
5 restaurants and hotels, to amusement and recreation industry
6 employees, to transportation employees. And the IWC is in the
7 process of trying to extend that now to retail industry
8 employees, and they have also opened up wage boards to try to
9 extend it to the broadcast industry employees and employees in
10 agricultural processing.

11 I might add that these petitions for the 12-hour day
12 came from employers, not from employees. And there was very
13 little testimony in any of the hearings by employees favoring
14 the 12-hour day.

15 We view the hours protections in particular as very
16 crucial to the welfare of California workers, especially those
17 who have no union protection. And we think that his votes have
18 undermined some basic standards for hours that have been around
19 in California for decades.

20 Therefore, we would have to oppose his confirmation.

21 CHAIRMAN ROBERTI: Thank you.

22 MS. CAPELL: Beth Capell, California Nurses
23 Association.

24 We're also in opposition.

25 On January 17th, 1986, the Industrial Welfare
26 Commission voted to deprive nurses and others who work in acute
27 care hospitals of the right to the 8-hour day.
28

1 We've continued to feel that 12-hour shifts in
2 hospitals jeopardize patient care. It is also our observation
3 in the intervening years that these have aggravated the nursing
4 shortage.

5 Nurses who work 12-hour shifts, week after week, year
6 after year, simply work fewer shifts in a month in order to
7 compensate for the stresses and strains of working 12 hours in a
8 day.

9 For these reasons, we are opposing Mr. Rude's
10 confirmation.

11 CHAIRMAN ROBERTI: Thank you very much.

12 Is there any other discussion or debate?

13 Mr. Rude, do you want to respond?

14 MR. RUDE: Yes, I'd like to.

15 First of all, the 1986 vote, the full Commission was
16 present, and it was a 5-0 vote to adopt alternative scheduling.

17 I think something that is important to be brought up
18 is the whole notion of the 12-hour shift arrangements. Those
19 are entered to by one-third -- by employees of defined work
20 groups who vote -- at least two-thirds of the vote must be made
21 -- so that they enter into an alternative work week arrangement
22 or work shift arrangement.

23 The employer's required to make reasonable
24 accommodation to those employees who choose or cannot
25 participate in that kind of shift arrangement.

26 The testimony that we heard on the Commission was
27 brought about by employers and employees both who indicated
28

1 that, you know, society is changing. And I think the Commission
2 needs to be responsive to that. There are more women in the
3 workforce; more women of childbearing age in the workforce who
4 would like shorter days [sic] during the week. Many of our
5 local communities have legislated and mandated trip reduction
6 agreements, where they're trying to get people off the roads in
7 their automobiles.

8 The Commission has looked at these issues, and as a
9 result, a majority of the Commission has voted in favor of
10 adopting flexible scheduling arrangements.

11 Also, I'd like to point out that several collective
12 bargaining agreements also allow for those 12-hour arrangements
13 as well. So, you know, to, I guess, paint me as an ogre who
14 wants to enslave people into a 12-hour agreement, I think, is
15 highly uncharacteristic.

16 That's my position.

17 CHAIRMAN ROBERTI: I would note that in 1986, we
18 confirmed you. I think that was after you cast your 1985 vote
19 against the minimum wage.

20 Why I want to say that, for the benefit of the
21 opposition, is that I think we viewed you as the employer
22 representative.

23 MR. RUDE: Correct.

24 CHAIRMAN ROBERTI: And did confirm you on two
25 occasions: one was after the 1985 vote.

26 I'm just throwing that into the mix for people to
27 understand.
28

1 I think there's a different obligation on Mr. Rude
2 than there would be on some others who might seek this position.
3 And Mr. Rude is to be viewed as somebody who is speaking for the
4 employer, with hopefully, a broad mind, but speaking for the
5 employer.

6 Senator Petris.

7 SENATOR PETRIS: Are there any employee
8 representatives on the Commission?

9 MR. RUDE: No, there are not.

10 SENATOR PETRIS: Shouldn't there be?

11 CHAIRMAN ROBERTI: I think that's our prerogative.
12 That's our obligation.

13 SENATOR PETRIS: What does the law say?

14 CHAIRMAN ROBERTI: Nancy, can you help us with the
15 law on that?

16 MS. MICHEL: Well, there are two nonlawyers belonging
17 to a recognized labor organization; two representatives of
18 employers; and one public member.

19 CHAIRMAN ROBERTI: I would think that the two
20 nonlawyers belonging to a recognized labor organization, I think
21 that qualifies as an employee rep., although the subject matter
22 of this Commission are essentially nonorganized --

23 MR. RUDE: Correct.

24 CHAIRMAN ROBERTI: -- workers.

25 So, it seems strange that our category is for
26 organized representation. That's probably better for them, but
27 still, specifically there's nobody who is necessarily a
28

1 nonorganized worker, but there are two employee-type reps.

2 SENATOR PETRIS: Doesn't the IWC jurisdiction extend
3 over all workers in the state?

4 CHAIRMAN ROBERTI: Yes, we're talking about minimum
5 wage, and I don't think -- well, essentially, it's minimum wage.

6 Give us --

7 MR. RUDE: Correct. It's all nongovernment employees
8 of the State of California.

9 CHAIRMAN ROBERTI: Aren't we essentially in this
10 Commission talking about people at the lower spectrum of income?

11 MR. RUDE: The Commission covers all employees, but
12 for the minimum wage issue particularly, it is the lower income
13 employees.

14 I'd also like to clarify that I actually voted for an
15 increase in the minimum wage; I just did not support the 4.25 at
16 the time because of the amount.

17 CHAIRMAN ROBERTI: What year was that again?

18 MR. RUDE: That was the last time it was increased.
19 I don't have the date in front of me, but it went into effect in
20 July of last year, I believe.

21 CHAIRMAN ROBERTI: So, the qualifications are: the
22 two nonlawyers belonging to a recognized labor organization; two
23 representatives of employers; and one public member. Membership
24 shall include members of both sexes.

25 SENATOR PETRIS: Can you tell us who the two
26 nonlawyers are who represent some recognized labor organization?

27 MR. RUDE: Robert Clark is the individual who
28

1 represents -- I believe it's the Operating Engineers.

2 And up until recently, Michael Callahan was
3 representing the Commission on the labor side. And because of
4 his untimely death, he -- we currently have an absence in that
5 position.

6 SENATOR PETRIS: Yes, that was just last month.

7 MR. RUDE: Yes.

8 SENATOR PETRIS: Now, you say that one vote was a 5-0
9 vote?

10 MR. RUDE: Correct.

11 SENATOR PETRIS: That means Mr. Callahan voted aye?

12 MR. RUDE: Correct.

13 SENATOR PETRIS: I'd like to ask the labor people to
14 come back and comment on that.

15 MR. RANKIN: We disagreed with his vote. We opposed
16 -- we have opposed consistently every effort of the IWC to
17 impose the 12-hour day. It's a basic change in working
18 conditions.

19 We've had the 8-hour day in California for years, and
20 in the 1970s, there was -- there were accommodations made to a
21 10-hour day in one order. Labor and management agreed to make
22 accommodations within the 10-hour day, and we tried to get the
23 Commission to accept that instead of the 12-hour day. They
24 refused.

25 They adopted the 12-hour day for millions of
26 employees in this state, and it's a totally different situation
27 compared to organized labor. If they agree on a 12-hour day,
28

1 they do it in a contract. They have a union there. They have
2 protections, and they can change it every two or three years.

3 SENATOR PETRIS: What I'm curious about is, two
4 persons from organized labor are voting along with the majority,
5 apparently, in a 5-0 vote.

6 Now, I'd like to know a little bit more about that.
7 That's kind of startling to me for the basic reason that it
8 seems to me it doesn't matter where the members come from, they
9 have to follow the statute.

10 The statute is designed to kind of provide whatever
11 protection they can at the lowest income level, as in the
12 minimum wage situation. And I don't understand two
13 representatives of organized labor voting for the 12-hour day,
14 or voting against the -- I don't remember which one we're
15 talking about here --

16 MR. RANKIN: It was the 12-hour day.

17 SENATOR PETRIS: Against the minimum wage or for the
18 12-hour day?

19 MR. RANKIN: As a matter of fact, one of them
20 resigned after the Commission voted for a 12-hour day, David
21 Padilla from the Teamsters.

22 I can't explain it. As I said, we opposed it in
23 numerous hearings, and we don't agree with the way they voted on
24 that issue.

25 We -- the way the Industrial Welfare Commission
26 works, they always set up a wage board before they change hours
27 or before they increase the minimum wage. And on all the wage
28

1 boards on those hours issues, those wage boards deadlocked.
2 Labor was opposed to it, and management was for it, except in
3 manufacturing, where we reached an agreement because we had
4 reasonable people on both sides who could negotiate something.
5 But that didn't happen in any of the others.

6 In the two agricultural orders, which they're now
7 proposing to send to a wage board, that was done on the
8 initiative of the IWC itself. Not -- there was not even an
9 employer petition to do that. And they are going to take away
10 hours protections when not even the employer's asked for it.

11 That is not being a guardian of the unorganized
12 workers.

13 SENATOR PETRIS: Who made the motion on that; do you
14 recall?

15 MR. RANKIN: I think it was Lynell Pollock, who is a
16 grower.

17 SENATOR PETRIS: Mr. Rude, I wonder if I could ask
18 you to walk me through that explanation again. I don't think I
19 understood it on the 12-hour thing.

20 You said that conditions are changing. There are
21 more women in the workforce. Therefore, you're going to go,
22 because there are more women, you're going to from 8 hours to 12
23 hours. That doesn't sit well with me.

24 Is that what you're telling us?

25 MR. RUDE: The 12-hour work week is a work week --

26 SENATOR PETRIS: Work day.

27 MR. RUDE: Work day, is defined by the employees
28

1 entering into a written agreement with their employer.

2 So, if you had, say, a work group of 10 people, for
3 example, and they said, "Gee whiz, we'd like to work shorter
4 numbers of days, shorter days [sic] during the week, but yet
5 longer hours."

6 Under current overtime rules, the employer probably
7 would not want to accommodate that because the employer would
8 have to incur overtime expense for that.

9 What this change allows is that -- the employees to
10 enter into an agreement, and there are protective conditions.
11 The employees agree to work a certain number of days per week up
12 to working 12 hours a day. They'd work three days per week, and
13 any days or hours they worked beyond that is paid at overtime.

14 SENATOR PETRIS: Now, how is that ratified? Is it a
15 two-thirds vote of the employees?

16 MR. RUDE: Two-thirds vote of the affected employees
17 of the work group that --

18 SENATOR PETRIS: If you have the situation you're
19 describing of ten employees, who's going to supervise that
20 election?

21 MR. RUDE: The manager supervises the election, the
22 manager of the work group.

23 SENATOR PETRIS: It's not some outside agency?

24 MR. RUDE: No, there isn't.

25 If there's a dispute, if the employees feel they're
26 not being treated unfairly [sic], they will send their dispute
27 to the Division of Labor Standards and Enforcement.
28

1 SENATOR PETRIS: What if they're not organized?

2 MR. RUDE: That's the route they would take.

3 SENATOR PETRIS: Do you want to comment on that?

4 MS. CAPELL: Beth Capell, California Nurses
5 Association.

6 Once that agreement is in effect, unlike a
7 collective bargaining agreement which is renewed every two to
8 three years, that agreement remains in effect. There is no
9 natural reopening of that agreement.

10 Consequently, in a period of a few years, you could
11 have ten entirely new employees who had not agreed to the
12 12-hour shift come to work.

13 Our experience with nurses, who are largely women, is
14 that although some of them may think initially that they're
15 going to like a 12-hour shift, after weeks and months of working
16 those kinds of hours go by, they find it extraordinarily
17 wearing. They find it very difficult to obtain child care for
18 that length of time, and they just -- they find that it
19 aggravates rather than helps their problem of women in the
20 workplace.

21 SENATOR PETRIS: How does it actually work out? Is
22 it a three-day --

23 MS. CAPELL: It's usually three 12s and four 12s, is
24 the usual expression. Three 12-hour days one week, four
25 12-hour days in the next week in order to make up the hours, if
26 you're going to work full-time.

27 What my members often do is simply not work that many
28

1 shifts, which is something that nursing provides the
2 flexibility.

3 CHAIRMAN ROBERTI: So, it'll average out to a 40-hour
4 week.

5 MS. CAPELL: Yes, over the course of a month.

6 CHAIRMAN ROBERTI: But as Mr. Rude indicates, it's a
7 two-thirds vote of the workforce.

8 MS. CAPELL: Of the workforce that is present at that
9 time.

10 There's not, as I understand it, not a reopening of
11 the issue after they've had some experience with it, unlike the
12 collective bargaining situation where they have an opportunity
13 to revisit it later.

14 MR. RUDE: The employees can recall their vote after
15 a period of one year.

16 CHAIRMAN ROBERTI: I guess I probably would never
17 vote for that, nor recommend anybody vote for it.

18 It just doesn't strike me -- the whole context
19 doesn't strike me as such an anti-labor posture that it would
20 warrant defeating a confirmation of somebody who's supposed to
21 be the employer representative on the on the board.

22 I mean, it's not a way I would vote, not a way I
23 would recommend, but I sort of put it in the area of opinion
24 rather than --

25 MR. RANKIN: Well --

26 CHAIRMAN ROBERTI: -- philosophical --

27 MR. RANKIN: Again, the statute says that they are
28

1 not to change the hours and working conditions. It uses the
2 standard of being prejudicial to the health and welfare of
3 employees.

4 The testimony at those hearings, as I said, the
5 petitions came from the employers. They're the ones who want
6 the 12-hour days, not the employees.

7 The employers control the elections. You can't have
8 a free election run by the employer where there's no union
9 around, especially. What recourse does an employ have?
10 Basically none. So, employees can be easily coerced into this.

11 We have tried to get that changed to make a fair
12 election process without any success, but the protections that
13 Mr. Rude said were there, the reasonable accommodation, that was
14 added by the Legislature after the 1986 12-hour day was passed.
15 The Legislature passed a bill, it was signed by the Governor,
16 which said that the employer had to make reasonable
17 accommodation to the employees who were already employed at that
18 time.

19 CHAIRMAN ROBERTI: When did we pass that?

20 MR. RANKIN: That was -- it was in 1987.

21 And one of the things you should know, this was all
22 done also without any research. The statute states that they --
23 that one of the functions of the IWC is research. They had done
24 the 10-hour day and wage orders many years ago. They never had
25 any record of how it worked. They still don't.

26 In the manufacturing order, where we and the
27 employers reached agreement, one of the requirements was that
28

1 employers instituting an alternative work schedule under 10
2 hours a day had to register it with the Department of Industrial
3 Relations, so at least we'd be able to do some research on
4 whether it worked or not.

5 The Industrial Welfare Commission resisted that in
6 any of the orders, so there's no basis of knowing whether it
7 works or not. They don't even want the employers to have to
8 register with DIR if they do this. How is anyone going to know
9 if it works? There's no statistics on it.

10 CHAIRMAN ROBERTI: Thank you very much.

11 Are there any witnesses in support?

12 Senator Mello.

13 SENATOR MELLO: I think part of the answer to Senator
14 Petris about the members who were representing labor
15 organizations, I just asked our consultant, Nancy Michel here,
16 and I guess they were all appointed by Governor Deukmejian, the
17 present administration.

18 Isn't that correct?

19 MS. MICHEL: They're all current appointees.

20 SENATOR MELLO: I think it's easy to go out and look
21 for people in all walks of life that reflect, you know, the
22 perspective of the administration.

23 I think just because they represent organized labor,
24 that doesn't mean they're automatically --

25 CHAIRMAN ROBERTI: Was it Mushy Callahan?

26 SENATOR MELLO: Mushy.

27 CHAIRMAN ROBERTI: There was nobody who was more
28

1 intensely pro-labor than Mushy Callahan, who just passed away.

2 SENATOR MELLO: Yes, I know Mushy, but --

3 CHAIRMAN ROBERTI: I just don't agree with your --

4 SENATOR MELLO: But the thing is here, in this case
5 -- well, okay.

6 What about the other appointment?

7 MS. MICHEL: Robert Clark.

8 MR. RANKIN: He was -- he's just been appointed after
9 -- it was David Padilla from the Teamsters who I said resigned
10 in protest.

11 And Robert Clark has, I don't think, had the
12 opportunity to vote on anything. He was just appointed after a
13 ten-month vacancy. He was appointed in October of this year
14 [sic].

15 SENATOR MELLO: The point is, Mr. Rude's trying to
16 make a case on how the Commission voted, and I think he's up for
17 confirmation himself.

18 I'm looking on how you voted. And quite frankly, I
19 haven't seen such an attack on low-paid workers before this
20 Rules Committee since Victor Veysey was here for confirmation.

21 If this organization is supposed to be there to
22 protect the rights of workers, make sure that the law is
23 followed, based on the evidence that was testified here before,
24 certainly your record is lacking in showing that support.

25 Now, let me ask you about, you said you didn't vote
26 for the 4.25 an hour; you voted for something less. What was
27 that amount?
28

1 MR. RUDE: It was 3.75.

2 SENATOR MELLO: All right, I'd like to ask you how
3 anyone can live on 3.75 an hour, \$4, or 4 and a quarter. Four
4 and a quarter will add up to about 175 a week; 3.75 is about 150
5 a week. And the poverty level right now for a couple is below
6 \$1,000 a month, it's 900 and some dollars.

7 So tell me, because if there is a place that you can
8 live -- this is what's happening in our society. People are
9 choosing to try to go on welfare instead of working.

10 So, I'd like to know how they can live with less than
11 four and a quarter an hour?

12 MR. RUDE: They probably can't. I don't think the
13 minimum wage provides for a standard of living in today's
14 society.

15 The issue of the amount of increase had to do, in my
16 view, of protecting all employees.

17 We're currently in the process of hearing testimony
18 on the minimum wage review we're doing now. And it's clear that
19 employees who have worked, and have seen increases, have had
20 reduced hours. And employers have testified that they have not
21 hired people because of that. They've had to pass on their
22 costs of doing business, and that does impact the employability
23 of people in this state.

24 SENATOR MELLO: It's the same argument they used on
25 the federal level, and you're using it here in California.

26 In addition to that, even the 4.25 is being
27 circumvented by many of the fast food places. They hire under
28

1 temporary conditions.

2 I read in the L.A. Times yesterday, and I was
3 appalled at these garment industries that are being done in
4 people's homes, so-called sweatshops, being paid \$1.25 an hour,
5 women and children and immigrants who are scared to death of
6 being found. But if they're here illegally, then I say send
7 them back, because my parents came here legally.

8 But the point is, why exploit them when they're here?

9 So, what is your office doing as far as these kinds
10 of incidents that come up, where people are not following the
11 law, and people are being paid less than the minimum wage? In
12 fact, people can't live with the minimum wage.

13 MR. RUDE: We encourage, when those things happen,
14 that they contact the Division of Labor Standards and
15 Enforcement. That's the enforcement branch of the State
16 government that goes out and gets those folks who are violating
17 the law.

18 SENATOR MELLO: How many complaints and convictions
19 have they garnered in the last four years?

20 MR. RUDE: That I do not know.

21 SENATOR MELLO: Have they gotten any?

22 MR. RUDE: I'm sure they have, but I do not know the
23 statistic on that.

24 SENATOR MELLO: I think the Governor's entitled to
25 appoint people to these boards and commissions, but I really
26 think if these boards really are trying to look out for --
27 you're being charged for looking out for protecting the rights
28

1 of workers, and I think you have to be sensitive to the workers
2 and be compassionate.

3 Voting for a sublevel minimum wage, and voting for
4 the 12-hour days, it just reminds me. I was around in the '30s.
5 I was a very young boy, but I'm telling you, it was horrible,
6 and it sounds like we're going back to those kind of times again
7 if we allow people in government to dictate this kind of
8 philosophy.

9 CHAIRMAN ROBERTI: Do I hear a motion before us?
10 Excuse me, Senator Petris.

11 SENATOR PETRIS: I wasn't finished. I'll try to
12 make it brief.

13 Which employers are you talking about here that came
14 in and requested this? Are these small employers, big ones, a
15 combination of both?

16 MR. RUDE: I'm sorry, the question --

17 SENATOR PETRIS: Regarding the minimum wage.

18 MR. RUDE: They're primarily small, independent
19 business people. Those are the folks who have come in and have
20 testified to the Commission on not increasing the minimum wage
21 because of the impact on their business and their ability to
22 employ people.

23 SENATOR PETRIS: Are any of the fast food chains
24 included?

25 MR. RUDE: There've been a couple, I believe. Some
26 of the major ones, like McDonald's, we haven't heard from
27 McDonald's. I think McDonald's actually pays more than the
28

1 minimum wage typically starting off.

2 Kentucky Fried Chicken, I believe, is one, and Carl's
3 Jr. restaurants, I believe, are the two that we've heard the
4 most from.

5 SENATOR PETRIS: Is that from individual franchisees?

6 MR. RUDE: Yes, it is.

7 SENATOR PETRIS: Or from the headquarters?

8 MR. RUDE: From both, but primarily from individual
9 franchisees.

10 MR. RANKIN: If I could point out, employment in
11 California increased for several months in a row after the
12 minimum wage was increased in July of 1988, and it also
13 increased in the hotel industry and the restaurant industry.

14 SENATOR PETRIS: They're the ones who were bucking
15 it.

16 MR. RANKIN: Yes.

17 The restaurant industry are the ones who were saying
18 that they had to shorten hours and lay people off, but the total
19 employment in that industry increased in the months after the
20 minimum wage was increased.

21 SENATOR PETRIS: I guess we don't have this problem
22 in the major companies, manufacturers and --

23 MR. RUDE: Typically, the larger organizations pay
24 considerably more than minimum wage.

25 The thing that we do look out after is the whole
26 notion of the ripple effect of the minimum wage, though, and
27 that is, in various labor contracts, as well as -- as well as
28

1 the equity within wage scale practices within companies. An
2 increase in the minimum wage can impact the overall --

3 SENATOR PETRIS: Well, I've heard that one before,
4 too.

5 I have a brother who was in management for many
6 years, and he always fought for a better deal for the lower
7 scale. I don't mean minimum, way about minimum.

8 And officially, management argued against him very
9 vigorously. But privately, they were all praying that the
10 demands of the workers were met, because they'd get their raise,
11 and they didn't have the guts to go out there and say so. They
12 just let the workers go in there and fight it out for them, and
13 then they rode the crest to keep the gap going. You know,
14 that's done all over the country, I guess, human nature being
15 what it is. That's understandable.

16 It's hard for me to grasp the whole picture, because
17 I really don't know the nature of all the employers except that
18 they seem to be concentrated in the smaller companies, as you've
19 indicated.

20 I would like to go back to the 8-hour day thing. I
21 don't know if we covered that. We covered the 12-hour.

22 Overtime pay for 8 hours, that's been on the books
23 since 1918.

24 MR. RUDE: Right.

25 SENATOR PETRIS: And it was enacted by a pretty
26 conservative Legislature and Governor at that time.

27 What are the reasons for the change that was made
28

1 last year on that?

2 MR. RUDE: We didn't change the 8-hour day as
3 statutorily defined.

4 What we've done is indicated that if employees and
5 employers want to enter into an agreement whereby they can work
6 beyond eight hours without overtime, they can do so.

7 SENATOR PETRIS: They can do that now; can't they?

8 MR. RUDE: They can do that now under 12 hours.

9 SENATOR PETRIS: They could do it before they changed
10 the law.

11 MR. RUDE: No, they really couldn't have done it on
12 their own, unless they were -- unless they could do that through
13 a collective bargaining agreement.

14 SENATOR PETRIS: You mean that no employer, prior to
15 last year, was allowed to work any person over eight hours if he
16 paid overtime?

17 MR. RUDE: Oh, they can if you pay overtime, yes.

18 SENATOR PETRIS: All right.

19 But this change says you don't have to pay overtime?

20 MR. RUDE: Only if the employer and the employee
21 agree beforehand.

22 SENATOR PETRIS: How many employees are going to
23 agree to that, unless it's a yellow dog contract and you're
24 picking them off, one at a time?

25 MR. RUDE: No, quite a few actually do agree, because
26 they want to work short days -- or, shorter number of days a
27 week and work longer hours.

1 SENATOR PETRIS: Without overtime.

2 MR. RUDE: Without overtime.

3 SENATOR PETRIS: Well, the overtime, is that always
4 based on eight hours plus one, or is it based on a 40-hour week?

5 MR. RUDE: It's -- the traditional overtime in the
6 State of California is anything in excess of eight hours in a
7 day.

8 SENATOR PETRIS: In any given day?

9 MR. RUDE: Yes, or 40 hours in a work week.

10 SENATOR PETRIS: Do you have to wait until the end of
11 the week to figure out the pay?

12 MR. RANKIN: No, if you work nine hours in one day,
13 you know you get one hour of overtime.

14 CHAIRMAN ROBERTI: You made a comment I want to get
15 back to.

16 You said, when Senator Mello asked you a question
17 about the minimum wage and somebody living on it, you said you
18 were looking out for all the workers.

19 What did you mean by that?

20 MR. RUDE: Those who are currently employed as well
21 as those who want to be employed.

22 CHAIRMAN ROBERTI: What's the impact on those who are
23 currently employed?

24 MR. RUDE: I think those that are currently
25 employed, as we've been hearing testimony recently, employers
26 are cutting back on hours, for example, which I think directly
27 impacts their livelihood.
28

1 You know, the minimum is not a real easy kind of
2 clean-cut issue, as it's often portrayed. It's kind of like a
3 double-edged sword in many ways. It's a very sensitive issue.

4 I think the Commissioners look at it, and they take
5 it very seriously.

6 CHAIRMAN ROBERTI: You're saying your vote was in
7 part motivated by the fact you're afraid the hours of existing
8 employees would be cut back?

9 MR. RUDE: Correct.

10 CHAIRMAN ROBERTI: Not so much the wages.

11 MR. RUDE: Hours and/or benefits, yes.

12 CHAIRMAN ROBERTI: Senator Mello.

13 SENATOR MELLO: Mr. Chairman, if I could just comment
14 in answer to your question, he's saying he's looking out for a
15 broader constituency.

16 You're willing, really, to let some people starve a
17 little bit with the hope that others will be lifted from
18 starvation.

19 You say this is a tough issue. It was tough when
20 Franklin Delano Roosevelt was President. But these issues are
21 tough. We have just to be able to have leaders that are going
22 to meet these challenges and come up with solutions.

23 I think I've heard this comment. Here I am, I'm an
24 employer myself, but I've heard these all my life, these same
25 stories that we can't afford this, we can't afford that, and try
26 to take it out on the people that can least afford it. And
27 they're working, the working poor. That's what they are.
28

1 SENATOR PETRIS: Mr. Chairman, I have to echo what
2 the Senator said.

3 The reason I asked about the bigger companies, they
4 don't have the problem, but the leadership comes from the White
5 House, who fought very hard against the national effort to raise
6 it to higher amount, and insisted that it come in -- I guess it
7 came in at 3.75 at the national level.

8 Now, I watched an interview of the President of Sony,
9 who was in the States, from Japan. He was asked to compare
10 their style over there with ours. We're doing a lot of that
11 these days.

12 He said the thing that astonishes him is the gap
13 between the average pay of a manufacturing employer and the guys
14 on top. It goes 20, 30, 40 times, 50 times. In Japan, it
15 rarely exceeds four or five. No matter how big the company is,
16 and how wealthy, and so forth, they don't have those kinds of
17 gaps.

18 And yet, it boggles my mind that the tone which the
19 smaller employer sets really comes from those big guys on top
20 who put out the word and say, "Hey, you don't want to let these
21 guys do this to you. Beat them down."

22 And I just can't abide that. It just doesn't seem to
23 me to be decent, or fair, or right.

24 And the corporate salaries in this country today are
25 crazy. I mean, I read a flock of them the other day from
26 Silicon Valley, you know, eight or ten companies. And the top
27 two or three guys all earn a million and a half, two million,
28

1 two and a half million. That's fine. I think they're entitled
2 to every penny.

3 But they shouldn't, at the same time, join the
4 crusade to beat up on people who are down on the lower end of
5 the scale because they can't afford it. Well, if they can't
6 afford it, I remember one person during the last recession who
7 had run the business in a miserable way and lost all kinds of
8 money, and his salary was \$5 million a year, and they gave him a
9 raise. They have a lot of juice with the people who set the
10 salaries, I guess, the board. Maybe it's full of their cousins,
11 and aunts, and uncles. I don't know how they work it.

12 There's just an attitude there that Senator Mello is
13 describing that I find totally unacceptable in our society
14 today. And yet it's there, and it's very, very strong.

15 I'm suspicious of moves away from traditional
16 protections, you know, the 8-hour day with overtime when you go
17 over. This flexibility, it seems to me, really works to the
18 benefit of the employer rather than the employee.

19 And now, this latest statement, which I'd like you to
20 comment on -- and that's my last comment, Mr. Chairman -- in the
21 agricultural area, where the Commission is reaching out and
22 suggesting a change which severely works to the detriment of the
23 employee.

24 How in the world, under the statute, is that
25 justified? Are you familiar with that proposal?

26 MR. RUDE: Yes.

27 SENATOR PETRIS: Can you tell us a little bit about
28

1 it?

2 MR. RUDE: It was -- it was a proposal to have the --
3 certain aspects of the overtime rules and the wage order be
4 consistent between wage orders.

5 And it was a petition that came before the
6 Commission. And we've had a variety of testimony on that.

7 SENATOR PETRIS: Who was the petitioner?

8 MR. RUDE: I don't recall at the moment who the
9 petitioner was.

10 SENATOR PETRIS: Well, the claim is that it wasn't a
11 petition from an individual or a company. It came from the
12 Commission.

13 Now, the Commission has the right to do that, but I'm
14 wondering why it would take the initiative on something that is
15 perceived by the employees as a setback.

16 It's just like the Governor with OSHA. The
17 employers didn't ask for that. They didn't want OSHA wiped out.
18 They know the benefits.

19 For some reason, he has this terrible anti-worker
20 attitude. He's showed it in the Agricultural Labor Relations
21 Board, and he showed it with OSHA. I don't understand that.

22 And he gives the signal, you know, for all employers
23 around the state: this is the way to go.

24 Well, anyway, I've said enough, Mr. Chairman.

25 CHAIRMAN ROBERTI: Is there a motion before us?

26 SENATOR BEVERLY: Mr. Chairman, I'd normally be
27 prepared to make a motion, but I find it difficult to count to
28

1 three today, and Senator Craven is not going to be here, I
2 understand.

3 CHAIRMAN ROBERTI: Then, at Senator Beverly's
4 request, we will put the confirmation over. At Senator
5 Beverly's and Senator Petris' request we will put the
6 confirmation over.

7 Let me add, on Mr. Rude's appointment, if he were the
8 labor representative, I would not vote for him, but he's not the
9 labor representative. He's the employer representative.

10 As much as my own preferences tilt toward labor, I
11 really do think it's only right to have somebody there who
12 speaks for small business, too. They're part of life in our
13 society as well.

14 Although I generally don't myself edge toward that
15 side, to think that the employer representatives have to somehow
16 turn a blind eye to the needs of small business, I think myself,
17 is dastardly. And I don't mind saying that.

18 We'll put this over and --

19 SENATOR MELLO: Mr. Chairman, if I could just say one
20 little thing --

21 CHAIRMAN ROBERTI: I just absolutely don't agree with
22 you, Senator, but you can say it.

23 SENATOR MELLO: The only point I want to make is --

24 CHAIRMAN ROBERTI: This is to have their
25 representative, a forum for people in small businesses to be
26 heard. Not to dominate, to be heard. And we're saying that
27 their representative has to speak for labor.
28

1 I just don't agree.

2 SENATOR MELLO: You haven't heard my statement yet.

3 CHAIRMAN ROBERTI: Yes, you can say what you were
4 going to say.

5 SENATOR MELLO: I'll withdraw what I was going to say
6 because you disagree with it already.

7 [Laughter.]

8 SENATOR MELLO: I was going to say what a great guy
9 he is, and I was almost ready to go on to the next item.

10 MS. MICHEL: Senator Roberti put this over for one
11 week?

12 CHAIRMAN ROBERTI: Whenever Senator Craven is around.
13 We assume Mr. Rude should be on call.

14 MS. MICHEL: We'll put it on calendar for next week.

15 [Thereupon this portion of the
16 Senate Rules Committee hearing
17 was terminated at approximately
18 3:00 P.M.]

19 --oo0oo--
20
21
22
23
24
25
26
27
28


CERTIFICATE OF SHORTHAND REPORTER

I, EVELYN J. MIZAK, a Shorthand Reporter of the State of California, do hereby certify:

That I am a disinterested person herein; that the foregoing Senate Rules Committee hearing was reported verbatim in shorthand by me, Evelyn Mizak, and thereafter transcribed into typewriting.

I further certify that I am not of counsel or attorney for any of the parties to said hearing, nor in any way interested in the outcome of said hearing.

IN WITNESS WHEREOF, I have hereunto set my hand this 14th day of June, 1990.


EVELYN J. MIZAK
Shorthand Reporter

500
29
990
10.20

HEARING
SENATE RULES COMMITTEE
STATE OF CALIFORNIA



DOCUMENTS DEPT.

JUL 3 1990

SAN FRANCISCO
PUBLIC LIBRARY

STATE CAPITOL
ROOM 113
SACRAMENTO, CALIFORNIA

WEDNESDAY, JUNE 20, 1990
1:55 P.M.

Additional copies of this publication may be purchased for \$6.20 per copy from:

Joint Publications
State Capitol, Box 942849
Sacramento, CA 94249-0001

Please add California sales tax. Make checks payable to STATE OF CALIFORNIA.

1 SENATE RULES COMMITTEE

2 STATE OF CALIFORNIA

3
4
5
6
7
8
9 STATE CAPITOL

10 ROOM 113

11 SACRAMENTO, CALIFORNIA

12
13
14
15 WEDNESDAY, JUNE 20, 1990

16 1:55 P.M.

17
18
19
20
21
22
23 Reported by:

24
25
26 Evelyn J. Mizak
27 Shorthand Reporter
28

APPEARANCESMEMBERS PRESENT

SENATOR DAVID ROBERTI, Chairman

SENATOR WILLIAM CRAVEN, Vice Chairman

SENATOR ROBERT BEVERLY

SENATOR HENRY MELLO

MEMBERS ABSENT

SENATOR NICHOLAS PETRIS

STAFF PRESENT

CLIFF BERG, Executive Officer

PAT WEBB, Committee Secretary

RICK ROLLENS, Consultant on Bill Referrals

NANCY MICHEL, Consultant on Governor's Appointments

ALSO PRESENT

DARYL ARNOLD, Member
California State Lottery Commission

ARTHUR CALDERON, Warden
California Rehabilitation Center of Norco

ALEXANDER R. CUNNINGHAM, Member
Public Employment Relations Board

MICHAEL PICKER, West Coast Director
National Toxics Campaign

BOB ZENZ, Legislative Advocate
California State Employees Association

H.W. "BUD" RIDGEWAY, Owner
Hazardous Waste Consulting Business

RASH BIHARI GHOSH, Complainant
EEOC Discrimination Lawsuit against DHS

GEORGE E. MEESE, Member
Unemployment Insurance Appeals Board

APPEARANCES (CONTINUED)

1 TIM McARDLE, Chief Counsel
2 Unemployment Insurance Appeals Board

3 PATRICIA E. CANTERBURY, Assistant Executive Officer
4 Board of Professional Engineers and Land Surveyors

5 MANUELA R. VALDEZ, President
6 Filipino Political Association

7 JACK HENNING, Legislative Advocate
8 California Labor Federation

9 SHIRLEY A. RALSTON, Member
10 Board of Governors
11 California Community Colleges
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

INDEXPage

Proceedings

1

Governor's Appointees:

DARYL ARNOLD, Member
California State Lottery Commission

1

Questions by CHAIRMAN ROBERTI re:

Position on More Numbers in Lottery

1

Plans to Go beyond 53 Numbers

1

Motion

2

Committee Action

3

ARTHUR CALDERON, Warden
California Rehabilitation Center, Norco

3

Motion

4

Committee Action

5

ALEXANDER R. CUNNINGHAM, Member
Public Employment Relations Board

5

Questions by CHAIRMAN ROBERTI re:

Specific Experience in Labor Law

8

Witnesses in Opposition:

MICHAEL PICKER, West Coast Director
National Toxics Campaign

8

Silicon Valley Toxics Coalition

8

San Diego Environmental Health Coalition

10

Questions by SENATOR CRAVEN re:

Location of National Toxics Campaign

12

Nature of Campaign

12

Involvement of DIANE TAKVORIAN

12

INDEX (CONTINUED)

1	Question to Consultant re: Inquiry Letter or	
2	Notification of Confirmation Hearing	14
3	BOB ZENZ, Legislative Advocate	
4	California State Employees Association	14
5	Statement by CHAIRMAN ROBERTI re:	
6	Timing of Long-term Appointments	11
7	Response by MR. ZENZ	16
8	Response by SENATOR MELLO	17
9	H.W. "BUD" RIDGEWAY, Owner	
10	Hazardous Waste Consulting Business	18
11	DR. ROSH BIHARI GHOSH, Ph.D., Complainant	
12	Discrimination Lawsuit against DHS	20
13	Assurance of Promotion	20
14	Threat of Termination	21
15	Supervisor Maps	22
16	Homart Project Site	22
17	Rejection of Probation	23
18	Acceptance of One Appointment	23
19	Evidence of Competence	24
20	Britain Environment Department	25
21	San Francisco Bay	25
22	Salary Reduction	26
23	Visit to England	26
24	Meeting in Monterey	28
25	Inspection Report for Mansion Group	29
26	Proposal for Regional Water Quality	
27	Control Board re: San Francisco Bay	29
28	Citizens for Better Environment	29
	Resolution of Lawsuit between Regional	
	Water Quality Control Board and Citizens	
	for Better Environment	30

INDEX (CONTINUED)

1		
2	U.S. EEOC Determination of Discrimination	30
3	Harassment from Employer	30
4	Outstanding Attitude Ratings	31
5	Refusal of PERB to Accept Discrimination Charge	32
6	Acceptance by SPB	33
7	Attempts to Meet with MR. CUNNINGHAM	33
8	Telephoned Threats	34
9	Contacts with GRAY DAVIS, State Controller	35
10	Flood in Bengal	35
11	Reduction of Salary	36
12	Attempts to Meet with Superiors	36
13	SPB Letter Mailed to Incorrect Address	37
14	Re-investigation by SPB	37
15	Questions by CHAIRMAN ROBERTI re:	
16	MR. CUNNINGHAM's Involvement	38
17	Denial of Merit Increase	38
18	Interview for Epidemiologist Position	38
19	Bad Reference from TSCP	40
20	EEOC Decision of Discrimination	41
21	Willingness to Participate in Reconciliation Meeting	42
22	Rebuttal by MR. CUNNINGHAM	42
23	Recommendation not to Terminate at End of Probationary Period	42
24	Questions by SENATOR MELLO of DR. GHOSH re:	
25	Putting All Blame on Lack of Merit Increase and Promotion on CUNNINGHAM	44
26		
27		
28		

INDEX (CONTINUED)

December 22, '88 Findings of SPB Appeals Board	44
Statement of Application Rejection	45
Qualifications	45
Response by DR. GHOSH	47
SPB Appeals Panel	47
Questions by CHAIRMAN ROBERTI of MR. CUNNINGHAM re:	
Knowledge of EEOC Investigation	48
Finding of Prima Facie Evidence	49
Appearance of Noncooperation with EEOC	50
Statements by CHAIRMAN ROBERTI re:	
Need to Hear from TSCP Personnel regarding Personnel Practices	50
Overlap of EEOC Investigation with Tenure at TSCP	50
Response by DR. GHOSH re:	
CUNNINGHAM's Knowledge of Complaint to Civil Rights Office	52
Request by CHAIRMAN ROBERTI to Put Over Confirmation	53
Need for EEOC Information	54
Statements by SENATOR MELLO	54
Motion to Put Over Confirmation on Call of CHAIR	54
GEORGE R. MEESE, Member Unemployment Insurance Appeals Board	56
<u>Witnesses in Support:</u>	
TIM McARDLE, Chief Counsel Unemployment Insurance Appeals Board	56
PATRICIA CANTERBURY, Assistant Executive Officer Board of Professional Engineers and Land Surveyors	59

INDEX (CONTINUED)

1		
2	MANUELA VALDEZ, President	
	Filipino Political Association	60
3	<u>Witnesses in Opposition:</u>	
4	JACK HENNING, Legislative Advocate	
5	California Labor Federation	61
6	Discussion re: Charts from EDD	62
7	BOB ZENZ, Legislative Advocate	
	California State Employees Association	63
8	Motion	63
9	Discussion by CHAIRMAN ROBERTI	64
10	Committee Action	65
11	SHIRLEY RALSTON, Member	
12	Board of Governors	
	California Community Colleges	65
13	Motion	66
14	Committee Action	67
15	JAMES RUDE, Member	
16	Industrial Welfare Commission	67
17	Motion	67
18	Committee Action	68
19	Termination of Proceedings	68
20	Certificate of Reporter	69
21		
22		
23		
24		
25		
26		
27		
28		

P-R-O-C-E-E-D-I-N-G-S

--oo0oo--

CHAIRMAN ROBERTI: Governor's Appointees appearing today, Daryl Arnold, Member of the California State Lottery Commission.

Mr. Arnold, we'll ask you what we ask all the Governor's Appointees, and that is what are your qualifications to assume this position?

MR. ARNOLD: I was a farmer all my life. That's probably the biggest gamble you can get.

CHAIRMAN ROBERTI: Well, that makes some sense.

MR. ARNOLD: Certainly the education aspect of it is where my interests lie.

CHAIRMAN ROBERTI: Are you in favor of raising the Lottery numbers from 49 to 53?

MR. ARNOLD: Yes, sir, I am because it means that education gets more money, and that's what I'm in support of.

The higher the amount of money that is given out in a Lottery, the more players you get, the more money that comes in. Consequently, you have additional amounts of money that goes to the schools. That's why I'm in support of it.

CHAIRMAN ROBERTI: Are there any plans to go beyond 53 numbers?

MR. ARNOLD: Pardon?

CHAIRMAN ROBERTI: Are there any plans beyond 53?

MR. ARNOLD: No, actually, the 53 seems to be, across the other lotteries, has been deeply reviewed and researched,

1 that we have been low, and we're coming up into about the range
2 which the other lotteries are now in, which I think is ample
3 because of the other games that they can play for less money.
4 But that's the one that brings in the big money for the schools.

5 CHAIRMAN ROBERTI: So the offset is, the people can
6 play for less money the Decco, and things like that?

7 MR. ARNOLD: Well, Decco and other ones. Obviously,
8 they can go in. There are low games to play, the Scratchers
9 games. They can play Lotto. And, of course, the big money is
10 in making the \$60 million swing.

11 And as I say, I'm more interested in the getting the
12 money rather than I am the players or the gamblers.

13 CHAIRMAN ROBERTI: Any questions of Mr. Arnold?

14 Your answer is reasonable, although I sort of like it
15 at 49, but reasonable people can disagree on that.

16 Is there any opposition in the audience? Then do I
17 hear a motion?

18 SENATOR BEVERLY: Move the approval.

19 CHAIRMAN ROBERTI: Senator Beverly moves that Daryl
20 Arnold's confirmation be recommended to the Floor.

21 Secretary will call the roll.

22 SECRETARY WEBB: Senator Beverly.

23 SENATOR BEVERLY: Aye.

24 SECRETARY WEBB: Senator Mello. Senator Petris.
25 Senator Craven.

26 SENATOR CRAVEN: Aye.

27 SECRETARY WEBB: Senator Roberti.
28

1 CHAIRMAN ROBERTI: Aye.

2 The vote is three to zero; confirmation is
3 recommended to the Floor.

4 Congratulations.

5 MR. ARNOLD: Thank you.

6 CHAIRMAN ROBERTI: The next appointment is
7 Mr. Arthur Calderon, Warden of the California Rehabilitation
8 Center, Norco.

9 Mr. Calderon, we'll ask you what we ask all the
10 Governor's Appointees, and that is why you feel you're qualified
11 to assume this position?

12 MR. CALDERON: Mr. Chairman, distinguished panel
13 members, since my appointment as Warden at the California
14 Rehabilitation Center on January the 1st, 1990, I am pleased by
15 what my staff and I have accomplished.

16 Communication with local community leaders has been
17 enhanced. The Citizens Advisory Committee recently hosted a
18 two- day conference of other Citizens Advisory Committees from
19 around the state, local city managers and council members were
20 in attendance.

21 Morale is high among the employees at CRC. We have
22 been able to manage the institution with the allotted resources,
23 which includes a \$78 million budget.

24 The hiring of women and minorities at my institution
25 has been a top priority, as evidenced by the many appointments
26 at all levels, including top administrative posts.

27 Since my appointment, there have been no riots,
28

1 escapes, or major incidents of any kind.

2 I have worked closely with employee organizations and
3 the Inmate Advisory Committee to make CRC a safer and better
4 place to live and work. I place a high emphasis on cleanliness
5 and have received many complimentary remarks from visitors on
6 the excellent appearance of the institution.

7 And just in summary, I have 24 years' work in the
8 Department. I promoted through the ranks, here, for the State
9 of California Department of Corrections.

10 Thank you.

11 CHAIRMAN ROBERTI: Is there any discussion or debate?
12 Is there any opposition to Mr. Calderon's appointment?

13 No questions. You got off easy today, Mr. Calderon.

14 Do I have a motion?

15 SENATOR CRAVEN: Move.

16 CHAIRMAN ROBERTI: Senator Craven moves Arthur
17 Calderon's appointment to the Floor be recommended as California
18 Rehabilitation Center, Norco, Warden.

19 Secretary will call the roll.

20 SECRETARY WEBB: Senator Beverly.

21 SENATOR BEVERLY: Aye.

22 SECRETARY WEBB: Senator Mello.

23 SENATOR MELLO: Aye.

24 SECRETARY WEBB: Senator Petris. Senator Craven.

25 SENATOR CRAVEN: Aye.

26 SECRETARY WEBB: Senator Roberti.

27 CHAIRMAN ROBERTI: Aye.
28

1 The vote is four to zero; confirmation is recommended
2 to the Floor.

3 Congratulations.

4 MR. CALDERON: Thank you.

5 [Thereupon legislative agenda
6 items were acted upon by the
7 Senate Rules Committee.]

8 CHAIRMAN ROBERTI: The next appointment is
9 Mr. Alexander R. Cunningham, Member of the Public Employment
10 Relations Board.

11 MR. CUNNINGHAM: Good afternoon.

12 CHAIRMAN ROBERTI: Mr. Cunningham, we're going to ask
13 you what we ask all the Governor's Appointees, and that is why
14 you feel you are qualified to assume this position?

15 MR. CUNNINGHAM: Yes, sir.

16 Mr. Chairman, and Members of the Rules Committee,
17 it's indeed a pleasure for me to be here today, to have the
18 opportunity to discuss my qualifications to be a member of the
19 PERB Board, and to answer any questions you may have concerning
20 my appointment.

21 I consider myself somewhat of a rare breed in that I
22 have served governors of both parties in the last three
23 administrations as a Department Director or Chief Deputy
24 Director.

25 I first appeared before Senate Rules in 1979 as
26 Director of the Office of Emergency Services, and again in 1986,
27 as the Chief Deputy Director for the Department of Health
28

Services, where I was responsible for the State's Hazardous and Toxic Waste Program for the last four years.

From 1983 to 1986, I served as Chief Deputy Director for the Department of Water Resources. Immediately prior to my current assignment, I served as Special Assistant to the Governor for Earthquake Recovery following October's devastating Loma Prieta earthquake.

All of these assignments have provided me a great opportunity to participate in labor matters first-hand. While at the Department of Water Resources, labor relations was one of my areas of responsibility. As Director of the Office of Emergency Services for five years, and as the administrator of the Toxic Waste Program for the last four years, I was presented with labor issues on a frequent basis.

I have extensive experience in grievance procedures and grievance resolutions, and have served as a Skelly hearing officer on numerous occasions resolving employee disciplinary matters.

I have always tried to approach situations, including those dealing with employee relations, with a commitment to honesty, integrity, fairness, and above all, a great deal of common sense.

Obviously, when managing an organization of over 1,000 people, some of my decisions may not have been popular with all concerned, but I can honestly say, Senator, that all of my decisions were made based on objective consideration of all of the facts available.

1 In the short time that I've been a PERB Board member,
2 I've approached decision making in the same way, and if
3 confirmed, I fully intend to continue to perform my job
4 consistent with these principles.

5 I believe my diverse background offers me the
6 opportunity to bring a broad perspective to the Board.

7 I began my career in State service some 31 years ago
8 in civil service ranks at Caltrans. I was a member of the
9 California State Employees Association, the largest State
10 employee union, for over 30 years, from 1959 until assuming my
11 present position. Thus, I've been on both sides of
12 labor-management issues.

13 Upon my appointment to PERB, I resigned my Union
14 membership in order to bring an unbiased view to my new job.
15 Having been a rank-and-file Union member, as well as having been
16 a manager, I appreciate and understand the need for stable labor
17 relations, and I am committed to the role that PERB plays in
18 that process.

19 I feel my participation in these matters has given me
20 a realistic insight into labor issues and personnel matters. I
21 feel I am able to study and appreciate both sides of any given
22 issue.

23 Finally, I am most proud of my strong affirmative
24 action record and was pleased that the Toxics Program received
25 special recognition in that area during my leadership.

26 Senator, in closing, I believe I am an action-
27 oriented decision maker, committed to making the collective
28

1 bargaining system work.

2 CHAIRMAN ROBERTI: Thank you, Mr. Cunningham.

3 Let me ask you again, what specifically is your
4 experience in labor law?

5 MR. CUNNINGHAM: Well, in labor law --

6 CHAIRMAN ROBERTI: I know you touched on it and I
7 missed it.

8 MR. CUNNINGHAM: Yes, sir.

9 When I was at the Department of Water Resources,
10 labor relations reported directly to me. As the Director of the
11 Office of Emergency Services under the previous administration
12 and -- for five years, and as the administrator of the Toxic
13 Waste Program, we dealt with grievance issues, employee
14 relations matters, on a constant basis, working conditions,
15 employees' rights, grievances, Skelly hearings, and the like.

16 CHAIRMAN ROBERTI: Is there any opposition in the
17 audience? Yes, please come forward.

18 MR. PICKER: My name is Michael Picker. I'm the West
19 Coast Director for the National Toxics Campaign. I'm here
20 representing a number of community organizations that are
21 affiliates here in California. I'd like to pass on some of
22 their concerns.

23 Speaking for Ted Smith for the Silicon Valley Toxics
24 Coalition, he argues that there are many factors that, upon
25 close examination, will demonstrate that Mr. Cunningham is
26 unqualified for the PERB appointment.

27 Mr. Smith says he found out about this confirmation
28

1 only at the last moment, and he says that's true of other people
2 with whom he's been discussing this issue. As he understands
3 it, the only people who were notified of the confirmation
4 hearing were those who are directly involved in employee
5 relations, none of whom are directly familiar with
6 Mr. Cunningham's record at the Toxic Substances Control Program.

7 Mr. Smith says:

8 "I strongly urge you to
9 continue this hearing until an
10 appropriate future date so that the
11 committee can be fully apprised of
12 Mr. Cunningham's record,
13 particularly in the following areas:

14 "1. His mismanagement of the
15 Toxic Substances Control Program;

16 "2. His mishandling of the
17 Tanner Hazardous Waste Planning
18 Program;

19 "3. His unfair, discriminatory
20 and unprofessional treatment of
21 employees within the Department of
22 Health Services;

23 "4. His complete lack of any
24 relevant background or experience
25 for the position with PERB."

26 He goes on to say:

27 "This appointment is a blatant
28

1 attempt to offer a 'golden
2 parachute' as a political favor to a
3 political ally and should not be
4 sanctioned by this committee."

5 I'd also like to raise issues brought forth by
6 Ms. Diane Takvorian from San Diego Environmental Health
7 Coalition. She says she's writing in regards to the pending
8 confirmation, and that she's had an opportunity to work with
9 Mr. Cunningham on numerous occasions during his tenure with
10 the Department of Health Services. As a result of those
11 experiences, she asks that you also continue this
12 confirmation until a further investigation has been
13 completed.

14 The Environmental Health Coalition is concerned
15 with the health and environmental impacts associated with
16 exposure to toxics and has worked with a number of
17 communities in the San Diego area to protect residents.
18 She's been especially active with the community of --
19 surrounding the Chatham hazardous waste site in San Diego, a
20 state Superfund site since 1982:

21 "The site cleanup was subject
22 to numerous and needless delays
23 during the eight years the state has
24 been working on it. In May, 1988,
25 Mr. Cunningham came to Escondido to
26 meet with the county and city
27 officials and the community and
28

1 promised that cleanup would start
2 immediately. Two months later, the
3 community was informed that the bond
4 act monies designated for this
5 cleanup had been exhausted.

6 "Mr. Cunningham was directly
7 responsible for these funds and was
8 asked several times about the
9 availability Each time he
10 assured the community the monies
11 would be available, [and] sadly,
12 this turned out not to be true."

13 The San Diego Environmental Health Coalition is
14 concerned that:

15 "... the lack of concern
16 demonstrated for a pressing
17 community issue and the public
18 health will be carried over to [a]
19 lack of concern for public
20 employees."

21 CHAIRMAN ROBERTI: Thank you very much.

22 SENATOR CRAVEN: May I ask you a question?

23 CHAIRMAN ROBERTI: Senator Craven.

24 SENATOR CRAVEN: I'm sorry, I didn't hear your name
25 nor the organization that you represent.

26 MR. PICKER: I'm Michael Picker with the National
27 Toxics Campaign.
28

1 SENATOR CRAVEN: National Toxics Campaign?

2 MR. PICKER: Correct.

3 SENATOR CRAVEN: And where are they located?

4 MR. PICKER: We have three offices in California.
5 We've just recently opened our Sacramento office, which is
6 our statewide administrative headquarters.

7 SENATOR CRAVEN: What is the nature of the
8 Campaign? I think maybe that's what I'm having a little
9 trouble discerning.

10 MR. PICKER: It's a campaign for preventative
11 solutions on a variety of different pressing environmental
12 problems.

13 SENATOR CRAVEN: Would you be in any way
14 categorized as a consultant in that area?

15 MR. PICKER: No, no. Environmental group.

16 SENATOR CRAVEN: You're an environmental
17 organization?

18 MR. PICKER: A membership organization.

19 SENATOR CRAVEN: And what was the name of the lady
20 from Escondido?

21 MR. PICKER: The San Diego Environmental Health
22 Coalition is headed by Diane Takvorian.

23 SENATOR CRAVEN: Do you know where she lives?

24 MR. PICKER: She lives in the city of San Diego.
25 She works with folks at the Chatham Brothers site in
26 Escondido.

27 SENATOR CRAVEN: She works at the Chatham Brothers?
28

1 MR. PICKER: She works with. She is also an
2 environmental group.

3 SENATOR CRAVEN: What does she do at Chatham
4 Brothers?

5 MR. PICKER: Well, my understanding is that they
6 supply information. They supply community development
7 support to help people with their organizational
8 difficulties. They help them to read and interpret
9 documents. They help them to --

10 SENATOR CRAVEN: What would she do as to the
11 organization at the Chatham site? What organization would be
12 required?

13 MR. PICKER: I'm a little unclear as to the
14 question. What kind of organization might people need help
15 with?

16 SENATOR CRAVEN: Well, you know, we knew what the
17 Chatham site was. We knew what it contained.

18 The question was, how long would it take us to get
19 it cleaned up.

20 What could she do, or has she done, which has in
21 any way profited us as an entity, as the State of California?

22 MR. PICKER: Well, I'd have to say that during the
23 eight-year course of cleanup at Chatham Brothers, we didn't
24 know at the onset what the extent of the contamination was,
25 nor did we know the constituents of some of the drums.

26 As I recall, the site started out as drum storage,
27 and it was soil contamination.
28

1 So, I think that, given the fact that you're seeing
2 not only a developing program, but developing community
3 response, there's tremendous need for community developers,
4 community organizers, to work with people so that they can
5 participate in what I think everybody will agree is a
6 tremendously complicated and often unsatisfactory process.

7 SENATOR CRAVEN: Yes, very good.

8 Thank you very much.

9 CHAIRMAN ROBERTI: Nancy, did we notify people of
10 the hearing who would have had dealings with --

11 MS. MICHEL: We don't send out notification of the
12 hearing.

13 CHAIRMAN ROBERTI: -- Mr. Cunningham's prior
14 position? I know we send out --

15 MS. MICHEL: The inquiry letter, no. We would have
16 sent it to those interested in the present job assignment.

17 CHAIRMAN ROBERTI: We normally send the inquiry
18 letter to people interested in the current job assignment,
19 but not past job assignments.

20 MS. MICHEL: We will change that. It's a good
21 point.

22 CHAIRMAN ROBERTI: Is there anyone else in the
23 audience either in support or opposition? I take it you're
24 in opposition?

25 MR. ZENZ: We're kind of on both sides of that,
26 Mr. Chairman.

27 CHAIRMAN ROBERTI: Okay, well, let's hear it then.
28

1 MR. ZENZ: Bob Zenz, representing the California
2 State Employees Association.

3 The one point the previous speaker made we concur
4 with. We believe that with this Governor leaving office in
5 approximately six months, that a five-year appointment to
6 something as important as the PERB Board, that affects State
7 employees, is something we would prefer to see held over and
8 a new Governor.

9 But given the fact that that's not the case, he's
10 here to be confirmed now, there is -- what I'd like to say is
11 that CSEA represents about 85,000 State employees that are
12 covered under the collective bargaining law, which the PERB
13 Board administers.

14 In our experience with Mr. Cunningham, in the
15 various capacities he's had in State serve, his personal and
16 professional integrity is not in question here at all. We
17 feel that the kinds of decisions he's made have been the
18 kinds of decisions that anyone rationally and objectively
19 would have to make. So, we're not opposed to him on that
20 basis.

21 CHAIRMAN ROBERTI: So, it's mainly the timing of it
22 all?

23 MR. ZENZ: Yes.

24 CHAIRMAN ROBERTI: As I indicated at a previous
25 hearing, and I might as well make my point clear, the timing,
26 especially on some of the long-term appointments, is a factor
27 in my mind. It's not a conclusive factor, but it should be a
28

1 consideration.

2 However, I think I have to remind people of my own
3 political persuasion or outlook that when it was Governor
4 Brown's last month in December, I have never been so busy
5 grinding out appointments, as we were trying to confirm
6 Governor Brown's last-minute appointments.

7 Now, I guess one argument is, well, you've got the
8 majority; the majority can do anything it wants. I guess
9 politically that may be true.

10 But as far as public acceptance of what the
11 government does, I think too radical a double standard
12 wouldn't set well as far as the public's perception of the
13 Legislature is concerned.

14 Another point, and I'm using you as, I guess, sort
15 of a foil to make this point, is that the basis upon which
16 we put out Governor Brown's appointments was that the law
17 specifically allows the Governor the right to make the
18 overlapping appointments. And the reason for that is
19 continuity, and the failure of any one body, of any one
20 person, to dominate thinking on a number of boards, at least
21 for a number of years into the new administration.

22 Those are factors in my mind, too.

23 MR. ZENZ: We'd like to address that point.

24 CHAIRMAN ROBERTI: Yes.

25 MR. ZENZ: Mr. Chairman, on that point, CSEA as an
26 organization has no problem with Mr. Cunningham's philosophy
27 interpreting the law for PERB. We believe that CSEA will
28

1 fare fairly in that sort of a situation under him, as
2 compared to some others that could have been placed on that
3 Board.

4 So, to that extent, that part's not an issue with
5 us.

6 CHAIRMAN ROBERTI: So, it's really just: leave it
7 to the new Governor.

8 MR. ZENZ: Yes, sir.

9 We believe that Mr. Cunningham, had it not been the
10 last six months of this administration, we would probably be
11 standing here applauding that appointment, because, based on
12 his background and his experience with State service, he's a
13 career employee. He understands both sides. His decisions
14 have indicated that. His actions as an administrator have
15 indicated that.

16 We believe we fare better with someone
17 understanding the system and being fair and equitable, rather
18 than someone who doesn't understand the system and takes five
19 years to train them into the process.

20 SENATOR MELLO: Mr. Chairman.

21 CHAIRMAN ROBERTI: Yes, Senator Mello.

22 SENATOR MELLO: I agree with the statements you
23 made regarding the former Governor's appointments and their
24 constitutional right.

25 I think also what must be said is that I think you,
26 in providing the leadership in our party, with the majority
27 party, we are undertaking these confirmations on a case-by-
28

1 case basis.

2 Going back to when Governor Brown was in, a
3 statement was made then, and we have the clipping, that
4 Senator Maddy made. He said, and I quote:

5 "I see no reason why we should
6 confirm any of Governor Brown's
7 appointments when a new Governor's
8 going to be taking office shortly."

9 And, quite frankly, go back and take a look at the votes.
10 The votes were like 21 "aye" and 14 "no", or 15.

11 Now they're saying, they're kind of hoping that the
12 Democratic Party, which has the majority in the Senate and
13 the Assembly, but in confirming, that we put politics aside
14 and be fair, which I think we're doing. But going back about
15 eight years, it was their stated statement that's in the
16 press that they wanted to deny Governor Brown's confirmations
17 from being confirmed on the Floor.

18 I think turnabout is fair play, but we're not
19 turning about. We're handling them, I think, very
20 expeditiously and fairly.

21 CHAIRMAN ROBERTI: Thank you very much.

22 MR. ZENZ: Thank you.

23 CHAIRMAN ROBERTI: Is there anyone else in the
24 audiences who wishes to testify? Please come forward.

25 MR. RIDGEWAY: My name is H.W. Ridgeway, and I have
26 a little hazardous waste consulting business.

27 And I wish to object to his appointment because,
28

1 number one, I think he's incompetent. Any time hazardous
2 waste inspections cost somewhere between \$85,000-125,000
3 each, whoever's at the head of the helm is not very
4 competent.

5 And another thing, he has in his Toxic Substances
6 Control Program, he has a 20 percent turnover amongst his
7 inspectors, his hazardous materials specialists. Any time
8 you've got a 20 percent turnover, something's got to be
9 pretty badly wrong.

10 And I just think -- I have all kinds of letters,
11 back and forth between him and his people, that will prove
12 beyond any shadow of a doubt that all they're interested in
13 doing is perpetuating the complex procedures that he has
14 dreamed up.

15 The law is fairly clear as to what should be done.
16 The regulations get a little more sticky. But when you're
17 really bogged down in an accomplish-nothing procedure, and
18 get to the point where that Toxic Substances Control Program
19 has gotten, it's simply and for only one reason: because of
20 Cunningham, and Willis, and the rest of his helpers that
21 promulgate that program.

22 And I just think that for -- because of his high
23 turnover, and in some of these units, I know that there's a
24 tremendous amount of employee unrest. In fact, I was told
25 that in this hearing there was some 40 State employees called
26 up, but only two -- wishing to lodge a protest -- but only
27 two would leave their names. Now, I don't know who -- you
28

1 know, I don't know who they were. I have no idea who the 40
2 was.

3 But it just appears to me that in looking at that
4 Toxic Substances Control Program, reading some of the letters
5 that have been written back by him that I have copies of
6 here, and also by his people making excuses for not
7 investigating a complaint, I don't think that guy even ought
8 to be in State government, let alone have the public spend
9 \$88,000 a year of their money on him.

10 CHAIRMAN ROBERTI: Thank you very much.

11 Is there anyone else in the audience? Please come
12 forward.

13 DR. GHOSH: Your honor, my name is Dr. Rash Bihari
14 Ghosh.

15 I have been working for Toxic Substances Control
16 Program since November, 1986, as an associate hazardous
17 materials specialist.

18 Before I came to the Department of Health, I worked
19 in Stanford University as a senior scientist and did
20 research, a project for NASA in direction of the climate and
21 the nutrients.

22 I came to work for State of California with a great
23 hope, one of the richest employer of the art, and I'll be
24 working on groundwater contamination program in site
25 mitigation.

26 I was assured by the then Chief, he's now Regional
27 Administrator, that I'll be promoted as soon as Dr. Paul
28

1 William retires, and they offered -- assured me highest
2 salary and better position.

3 So, in the month of May, Paul William, Dr. Paul
4 William retired, but I was not given the position. Instead,
5 my employer started harassing me, and I documented all of
6 this. I did everything possible. My employer did everything
7 possible.

8 I have this amount of documents. And if you look
9 at some of them, you will see.

10 And continuous harassment, I will offer, we are
11 adult. If we make mistake, I said then, I'm saying now, I'm
12 willing to correct it. Give me the list.

13 I did not get any cooperation, and it's a long
14 story. I can tell six, seven hours, maybe ten hours. I'll
15 lay it down very brief.

16 So, I was threatened to fire in June while I was
17 attending a creative thinking meeting with Mr. Cunningham and
18 other leaders in Sacramento. I reported to my supervisor's
19 supervisor that I better be transferred to other group and
20 that would solve all this problem. I talked with one of the
21 senior -- the senior most person in the division, Mr. Dan
22 Murphy, and he said, "Rash, don't worry. This happens all
23 the time. I'll take care of it."

24 But he could not go any farther, because Department
25 Unit Chief did not agree, or agreed to disagree.

26 Anyway, making long story short, I did everything
27 possible. I did all the works on time. I have all the
28

1 attachments. I don't need much witness. The evidences are
2 here, the type of harassment I went through.

3 And my supervisor wrote -- if you look at -- if I
4 go attachment by attachment, it will take a long time -- but
5 if you look at the attachment, the handwritten memo, S and T,
6 you'll see that all the time sheet was written by my
7 supervisors. They wrote one map, and then on top of it, I
8 finished in one week, and then he wrote another map. It's
9 his own handwriting. Is a gross injustice.

10 Another map; I finished that. And all the
11 schedules: 24 hours, 30 hours time required to finish the
12 job. He's given me 8 hours, 12 hours, including traveling
13 time. I don't need any -- it was written by my supervisor.

14 Similarly, the month of November, he wrote one map,
15 giving me -- that is the month my probation period will be
16 ended. I finished all of this 10 days, 12 days before my
17 time. He wrote another map on that map.

18 His handwriting. I don't need any witness. It is
19 his handwriting. Say: Rash, I updated your map. That will
20 reflect additional assignments that I gave you.

21 He gave me assignment on weekend. He gave me these
22 assignments in addition to 220 hours allotted in the State
23 Bond Expenditure Plan that is published. And in addition to
24 my regular work, I did all this work.

25 Yet, they picked up one site, one project. They
26 were not happy. That is, your honor, will be Attachment V --
27 U,V. Here, that is on Homart, expenditure plan for Homart
28

1 site in South San Francisco. It's interesting of all. They
2 could not decide themselves for 18 months how to answer
3 citizen, and then here it has got a PC coded, and everything
4 from State. One group of people or employees decided to put
5 into the Bond Expenditure Plan to clean it for another ten
6 years. And another group say it has already been cleaned.
7 And this is also the Bond Expenditure Plan, published as a
8 public document, and that is published in public document.
9 This says: site -- this site has been cleaned up. Site
10 cleanup all completed.

11 Same document, same year, and here, these
12 documents, same site, say: site cleanup will begin 1992 and
13 1990.

14 They asked me -- I was not a project officer --
15 they asked me to do this work to test my knowledge. I did
16 the project. At the time -- I still -- I stand for my
17 recommendation, and the draft I made. I was not given
18 letter. They did not give me any document they should give
19 me as a supervisor. I received it from the Legal Department,
20 deed restriction document, three days after I finished the
21 work. I have written evidence.

22 Now, of all these, they rejected my probation, and
23 they -- while I wanted to negotiate myself, the attorney did
24 not give me the opportunity. Anywhere [sic], it ended up
25 they could not -- they could not do what they wanted to do.

26 I have -- I accepted only one appointment. Still
27 I'm working on that appointment that is the last but one
28

1 attachment. That is the last but one attachment, and that is
2 the appointment I accepted. I have not accepted any other
3 appointment.

4 They have been humiliating me. They've been --
5 they stopped me going to attend international conference, and
6 there's the evidence. I personally requested our respected
7 leader, Mr. Cunningham, that could you do something that I
8 can attend the conference.

9 Instead, he asked supervisor to take action against
10 me. And supervisor took action against me. And then, they
11 even did not give me back vacation time to attend the
12 conference, and they put out the words.

13 When they evaluate, then they say I do not
14 understand. I don't know the subject. But here is the
15 evidence if I know what I know, how I know, and how I do my
16 thing. If you look at -- these attachments are G. Tom
17 Iwamura wrote to me and not the Chief or the supervisor. He
18 studied the Santa Clara Valley hydrogeological 25 years, and
19 he wrote to me. That is the second paragraph. He quoted me,
20 how I interpreted his saltwater intrusion study, and what is
21 my understanding about the Santa Clara hydrogeology.

22 I'm not hydrogeology expert. I'm not a groundwater
23 expert. But how I interpreted within 18 months, or within 17
24 months, and my paper was accepted in the international
25 conference in groundwater. One of the prestigious conference
26 in the U.S. or probably in the world.

27 And they prevented me to go and attend that
28

1 conference. And that would have been a prestige to my Chief,
2 Chief of my Division. That would have been a prestige to all
3 of us.

4 Now, if you look at the second after G, another
5 attachment from -- another attachment is here from Britain
6 Environment Department.

7 You are welcome -- your honor, you are welcome to
8 write to them and get information. I have a file with the
9 Britain Environment Department. I did my Ph.D. from a
10 British university. I am the authority on the Liverpool
11 Mersey system, and I have demonstrated some authority on San
12 Francisco Bay. I studied three waters in the world: Bay of
13 Bengal, Liverpool Bay, and San Francisco Bay.

14 And what I have done in San Francisco Bay, I'm
15 going to explain to you now. And here you look -- there is a
16 meeting. This memo, there is a meeting. In the meeting that
17 decided while I was present that I should work on groundwater
18 than anything else because they liked my other works. The
19 meeting was conducted by my supervisor and other people
20 within the Division. And one EPA expert was there. An EPA
21 expert, Mr. Bill Wren, said: No, Rash should be included in
22 the groundwater study, and he understands hydrogeology of
23 Santa Clara; he should be doing it.

24 So, I was asked to do that, leaving other work.

25 Here they saved my conference, groundwater
26 contamination of Santa Clara Valley, which is one of the
27 national toxic hot spot. Santa Clara Valley has more
28

1 national priority list of sites than any other -- probably
2 any other county in the nation. And here is a demonstration.
3 I have the evidence. I can give you whole lot of evidence.

4 I don't know why I have been treated like that.
5 Now even the last month, June, they reduced my salary. They
6 reduced my salary \$190. I given an attachment to that, too,
7 here. If you look at -- I put a salary check here.

8 The Controller, they got a check from the
9 Controller, and then they wrote another check over it and
10 reduced \$190. And they are -- they said they will be doing
11 it.

12 Why I'm not leaving the Department? I don't know
13 why I'll be leaving. What have I done? I want to know the
14 answer. If I get the answer, I'll leave now. You are my
15 leader. I trust you. I will defer to your order, no string
16 attached. Unconditional.

17 Even I would like to contribute what I've learned
18 to make a foundation to remove all injustice. Let
19 Mr. Cunningham join with me. Let me give you \$100,000,
20 whatever asset I have. Let him give -- let us do something
21 good. If I have done anything wrong, he is my senior, I'm
22 willing to correct.

23 I said before, I have said many times, I did not
24 get any justice in the State system. What have I done?

25 I went to England. I asked for a sick leave --
26 actually, I asked for a vacation, and I got one additional
27 day, a Friday off, so that I can go to Washington, D.C., to
28

1 get my visa. And my supervisor told: No, you ought to
2 finish 5:00 o'clock. I said: I've been working, and I have
3 a leaving late night flight. My supervisor said: I don't
4 care if you have a midnight flight or what, but you finish
5 the Keystone Project. Then I said: Keystone Project
6 deadline is three months later, and I have done, and you can
7 review it. When I come back, I'll finish it. He say: I
8 don't care. I don't want to listen. I want you to finish
9 this by tonight. I say: If I finish this project, I cannot
10 be on the flight. He say: I do not have time to hear. It's
11 my order; you carry it out.

12 So, I finished that project midnight, and I got
13 locked out because of the security lock from outside. I
14 could not get out of the building, so I called State Police.
15 The State Police came and asked another colleague to open the
16 door, and Steve Preeble came and opened the door. It's all
17 recorded. I documented here if you see Attachment P,
18 communication and sick leave.

19 I have my passport here. While I could not attend
20 the meeting in England because sometime they called me in
21 Liverpool, Environment Department, critique at Lockquist,
22 Water Authority, and my professor. And I could not avail
23 critique at Lockquist. Say, maybe we can get you in without
24 visa. We went, and British government say we have changed
25 the rules. You are no more a citizen to Britain, so you
26 could not get in. We'll pay your ticket. Go to America and
27 get your visa.
28

1 So anyway, I came back. It's all here, sir. I
2 came back, and I get a visa from New York and I went back.
3 By the time, a whole lot of traveling, I became sick.

4 When I came back here, then my supervisor gave me
5 another warning letter that the telephone I called, the
6 message I left, why I did not reach to her directly. So, if
7 I do that, then I will be separated from the State
8 employment. It's all documented.

9 I can tell you hours, sir. So, I'm coming back to
10 the right thing, what Mr. Cunningham did.

11 Do you like to see my passport that I admitted in
12 U.S.A. within two days?

13 SENATOR MELLO: I've got several myself. I don't
14 think that's relevant.

15 DR. GHOSH: Okay, the type of harassment I went
16 through.

17 So, this is the situation. And the admission
18 statement, Mr. Cunningham doubled up within last two years.
19 Last June, there was the offset meeting in Monterey. People,
20 employee, do not accept that. When they say: We expect
21 personal commitment, responsibility from all members, that's
22 fine. We expect trust; support our members. That is not
23 true. That is incorrect. That should be the case. We value
24 the contributions of our members. That is not true. I just
25 briefly explained. We act with honesty, integrity, equity,
26 fairness and balance. These are all incorrect. That should
27 be the case.
28

1 The reason I say, I was asked to prepare a site
2 inspector -- inspection report for Mansion Group, which is
3 almost three miles away from a contaminated wells, saltwater
4 intrusion wells in Alviso towards the hill. We, anywhere,
5 calculated it that it is within the range of three miles, and
6 we ranked it as a national priority list of sites. Whereas,
7 NASA aqueduct ruptured on site within the campus, and two
8 impure sites within one mile has not even addressed. They
9 use about 10,000 chemicals.

10 There is a daycare center in the site, within the
11 same complex. And it is politically very sensitive.

12 I lived in San Jose. San Jose is my home town.
13 And recently I got a chance to get in, and I prepared a
14 document. If necessary, I can submit to you for your review.

15 Now, about this San Francisco Bay that I told you,
16 there's the attachment here. I prepared a proposal for
17 Regional Water Quality Control Board, 134 pages, to do the
18 water quality and aquatic habitat monitoring, in 1983, through
19 a consulting firm. And they did not accept that.

20 But recently, Citizens for Better Environment
21 approached me that whether I could represent them on their
22 behalf, on behalf of the public, to do something to stop
23 issuing permit to the San Jose. Then I say, what is my
24 business? I work for government. I cannot act for you.
25 They said: As a citizen, if you write to the government,
26 government will lend you to us, so you can speak on our
27 behalf.
28

1 So, if you'll look at the attachment, that will
2 tell. It's not that what I'm saying. I'm saying what I have
3 done.

4 There is a lawsuit between Regional Water Quality
5 Control Board and CBE. Everything was ready, and how I
6 resolved that.

7 If you look at that -- your honor, if you look at
8 that Attachment N. Citizens for Better Environment requested
9 my employer, and my employer agreed, and I reviewed this out
10 by documents, and I resolved this matter out of court. I
11 said: Despite both the parties, Regional Water Control Board
12 as well as the CBE. And the Regional Water -- CBE wrote me a
13 letter that they are happy what I did, and the Regional Water
14 Control Board also wrote me a letting that they are happy
15 with my findings. I said: You can issue permit to Sunnyvale
16 and Mountain View, but not my former home town San Jose,
17 because I worked in Alviso; I know what the problem is there.

18 I myself prepared a document, myself, study of
19 South Bay, and I have some understanding about the problem.

20 So, I can go on and on. Last but not least, U.S.
21 EEOC determined in my favor that they discriminated grossly
22 against me.

23 CHAIRMAN ROBERTI: Who are they?

24 DR. GHOSH: My employer, particularly
25 Mr. Cunningham as the Chief.

26 CHAIRMAN ROBERTI: Who found in your favor?

27 DR. GHOSH: Pardon?
28

1 CHAIRMAN ROBERTI: Who found this in your favor?

2 DR. GHOSH: United States Equal Employment
3 Opportunity Commission.

4 CHAIRMAN ROBERTI: And they found in your favor
5 that you had been discriminated against?

6 DR. GHOSH: Yes, yes, and it clearly said --

7 CHAIRMAN ROBERTI: Do you have a copy? Is that in
8 this book here?

9 DR. GHOSH: Absolutely, sir. The first one.

10 CHAIRMAN ROBERTI: Pardon me.

11 DR. GHOSH: Not only that, they're --

12 CHAIRMAN ROBERTI: Which section?

13 DR. GHOSH: From the first page, A.

14 Not only that, they have said something very
15 interesting. Those who are in a position to evaluate my
16 qualifications and experience, they rated me very high. And
17 not only did they ask me some of the wrong information were
18 given, and I gave them a reply because they did not need to
19 contact me because they think I have enough information to
20 support my case. So, they gave some wrong information for
21 record. I wrote a letter and I informed them: I am willing
22 to negotiated. I do not want to fight with my employer
23 because I respect my employer. I want to work for State of
24 California the rest of my life.

25 I have offer from some places with a good salary.
26 I did not. I'm a dedicated person. I believe anything, I do
27 it, and I proved it.
28

1 They have reduced my salary. They are harassing me
2 every day, almost every day. I have not left the job.

3 CHAIRMAN ROBERTI: Who are they?

4 DR. GHOSH: My employer.

5 CHAIRMAN ROBERTI: Again, the Department of Health
6 Services?

7 DR. GHOSH: Toxic Substances Control Division,
8 Control Program.

9 If I go up, I was kicked back, so they know that if
10 I go back, go to my employer, I don't have any place.

11 Now, why do I not get justice from the State
12 system? Why do I need to go to Equal Employment Opportunity
13 Commission?

14 Your honor, I'm angry. I beg your pardon. This is
15 the only time I got a chance to speak.

16 If I am wrong, correct me. I am willing to correct
17 myself.

18 And my employer rated my attitude as outstanding
19 through all my work. They rated repeated my attitude is
20 outstanding. I'm courteous. I'm patience. Is this my
21 reward?

22 What have I done? I want to know. If I'm wrong,
23 I'm willing to correct with no condition attached to it.
24 What have I done? I'm looking for an answer. I'm searching
25 for an answer.

26 I went to PERB, but PERB did not accept my charge.
27 I went to SPB. They did not accept my charge. But the SPB
28

1 now accepts it, because they have been trapped in their own
2 decision. The SPB say more interesting things here, if you
3 look. The SPB conducted a hearing about my qualification and
4 experience, whether I qualify for a higher position. And
5 here is one of the most interesting thing you can see here.

6 CHAIRMAN ROBERTI: Can we break for five minutes?
7 I have to make a phone call.

8 DR. GHOSH: Thank you, sir.

9 CHAIRMAN ROBERTI: Yes. We'll break for five
10 minutes.

11 [Thereupon, a brief recess was
12 taken.]

13 CHAIRMAN ROBERTI: The meeting will come to order.
14 Yes.

15 DR. GHOSH: Thank you, your honor.

16 I am so grateful that I'll be probably 50 percent
17 cured that at least I have the opportunity to tell my
18 frustrations, suffering, humiliation to my respected leaders.

19 I did not get chance to tell all these, and I carry
20 -- I have come to this situation, all of you know, of these
21 tablets, six a day. And I can give you my doctors. I have
22 come to that stage. And I might -- it might be reduced into
23 half. I can now begin to feel I am getting lighter.

24 I'm sorry if I'm emotional, but this is the first
25 opportunity I've got within three and a half years that I
26 have been working for the State.

27 I tried very honestly to meet Mr. Cunningham. So,
28

1 I took the opportunity of meeting Mr. Cunningham at the
2 Christmas party in 1988. I thought that this may be one of
3 the very calm, quiet, and widely accepted, well respected
4 moment and situation; maybe I will take the opportunity of
5 that moment in the name of Jesus.

6 I met Mr. Cunningham and, with due respect, mister,
7 I introduced myself. And Mr. Cunningham said: Oh, you came
8 from Stanford. I'm proud of you. Come over, you know, we
9 can talk.

10 He generously invited me and asked me that -- talk
11 with my secretary; make an appointment.

12 Is that true, sir?

13 MR. CUNNINGHAM: That's correct.

14 DR. GHOSH: Thank you.

15 So, I felt so good that once I can get half an hour
16 time to talk with him, then maybe he will change his mind,
17 maybe he will think in different direction.

18 So, I came back, and because -- and he even -- to
19 fighting with State of California is not easy job. Maybe 200
20 people who were employed would have been here, but they're
21 frightened to death. I received about eight telephone calls,
22 threat calls. I said: Well, sooner or later I will die.
23 I'll take a chance, you know.

24 So, a lot of people were -- wanted to come, but
25 they're afraid. And it will take a long time to tell a few
26 cases, but coming back to my cases, I called Mr. Cunningham's
27 secretary, and Mr. Cunningham's secretary told: Okay, Rash,
28

1 I'll get back to you.

2 And then, after a few days, she called me back.
3 And that's -- she is very proficient. She called me back.
4 She says: Mr. Cunningham would not be able to meet you
5 because until the -- you made a complaint of the civil
6 rights, until the civil rights investigation is completed.

7 So then, I said: Why -- could you try, you know,
8 just to convince him that I want to talk to him. Maybe we
9 don't need all this investigation. But I -- probably she
10 tried, or probably did not; I do not know. So, I did not get
11 chance.

12 So, I also contacted Gray Davis, State -- Honorable
13 Gray Davis, the State Controller, because I was not aware of
14 the system, where to go and what to do. So, I told that
15 salary checks -- I see his name. I thought that maybe he has
16 something to say in the system, so randomly, I sent a
17 mailgram in and also wrote to him. So, he -- he was kind
18 enough to reply my letter on the 5th of May, and suggested
19 that it's a serious discrimination. I gave an attachment in
20 my earlier application to your office. And it is a serious
21 discrimination, and you must approach to the right agency,
22 that is Public Relations Board. And you must contact Bob
23 Thompson.

24 But this letter never arrived in my address, so
25 there was a flood in Bengal. Bengal is one of the most --
26 probably the most favorite country. Twenty-five millions
27 people became homeless. So, the only time my family wanted
28

1 me to help, because they lost their home, and they paid my
2 bills because they had to spend a lot of money, and it's one
3 of the poorest country or the poorest country in the world,
4 to support my education in England. But then, I felt that I
5 should do something.

6 So, at that time I found that my salary was
7 reduced. State Controller adjusted my salary, and
8 Mr. Hagerty and other bosses in Sacramento said no, we will
9 reduce his salary.

10 So then, Gray Davis wrote me back, said: I don't
11 have the jurisdiction as the employer can do. What you can
12 do, you should meet -- and also Tom Harrigan, one of his
13 associates, called me and told that I talked with
14 Mr. Hagerty, Chief of Personnel of Toxic Substances Control
15 Program. So, it is better for you to meet Director.

16 So, I called Director's secretary, Director and
17 Director's secretary. Then Director's secretary told that
18 you -- I will talk with the Director and I'll get back to
19 you. So, she talked with the Director, and she went back to
20 me. She told me that because of protocol, you must first
21 meet Mr. Cunningham.

22 So, I again called Mr. Cunningham's office that in
23 order to get my salary things adjusted, I needed to see him.
24 But I did not get any positive answer. I did not get any
25 chance to meet him, because I felt that if I work the rest of
26 my life, I'd rather try to prove genuinely that I'm a good
27 person. I'm an honest person, and I want to do good things.
28

1 My attitude is good.

2 And I believe in it. And I must prove it in
3 action. Everybody's clever. I don't underestimate anybody,
4 so that's the way I tried to establish my character.

5 But it appears that some of the things are so tough
6 that I could not convince him today.

7 So, I did not get any response from
8 Mr. Cunningham's office. So, I -- meanwhile, I've been
9 trying with the State Personnel Board, and State Personnel
10 Board mailed that letter in the wrong address. And they are
11 talking about that you did not come to us within 30 days.
12 But I sent them a mailgram as soon as I received their notice
13 and to the President, Clair Burgener. But then Mr. William
14 Barton, who is the Assistant Executive Officer, wrote me that
15 you are late. You are not within 30 days.

16 But the date that they mailed the letter, I have
17 the letter with postmark, and the time I sent the mailgram,
18 it is within 30 days. And if they write the letter and put
19 it into their, you know, briefcase and does not mail it, and
20 it comes 30 days later, it comes the 30 days. So, the time
21 they posted of the envelope, and the time I returned the
22 mailgram, in spite of all the wrong address, my answer was
23 within 30 days.

24 Anyway, they did not accept my request then, but
25 they have accepted my request now while the civil rights
26 investigation was completed. And the State Personnel Board
27 took over, and they started re-investigating, and they
28

1 assured me in front of my -- seven or eight of my colleagues
2 in a hearing conducted in my merit issue in Oakland, 18th of
3 April, they say: There will be a detailed hearing on this
4 investigation --

5 CHAIRMAN ROBERTI: When was this?

6 DR. GHOSH: The 18th of April of 1990, this year.

7 CHAIRMAN ROBERTI: But Mr. Cunningham was not there
8 at that time.

9 DR. GHOSH: No, it is a merit issue complaint. It
10 is another exam. That was another separate hearing conducted
11 that I was denied to sit for the exam or participate in the
12 examination.

13 CHAIRMAN ROBERTI: What I'm right now interested in
14 is what Mr. Cunningham's involvement in your case is.

15 DR. GHOSH: But the problem is, Cunningham
16 involvement in my case, my probation rejection went through
17 Mr. Cunningham. He was the person made the decision.

18 CHAIRMAN ROBERTI: And that's why you didn't get
19 the merit increase?

20 DR. GHOSH: No, that's why I did not get the merit
21 increase -- wherever I apply, they go back to the record, and
22 then they found that I -- my salary was reduced.

23 I was called for another interview as an
24 epidemiologist. I gave the attachment in my file in
25 Berkeley. Doctor -- two M.D.s and one Ph.D. arranged
26 interview, and I told: My name is not on the examination
27 list. Why did you invite me for interview?
28

1 They said: We saw that you did a project for NASA,
2 and you used the Statistical Analysis System, SAS, and State
3 of California used that system.

4 CHAIRMAN ROBERTI: You used what?

5 DR. GHOSH: Statistical package called Statistical
6 Analysis System.

7 The State of California used that system, and you
8 already know it, and you did a determine -- an analysis of a
9 big set of data on a global scale for NASA, 168 sides across
10 the arc, with the 27 parameters. So, it seems to me -- it
11 seems to us that you would be useful to our group, an
12 epidemiology group. And you have a good aquatic toxicology
13 background.

14 So, I was excited that I'll be getting the right
15 job that I should do. And then I was also -- raised question
16 how it is possible. By now I understand the State system. I
17 did not fill out the application. I did not go for the exam.
18 And I could not get into this exam.

19 So, I checked with them. I met with them
20 personally, that you are -- in my interview: Are you sure
21 what you're doing? They say: Yeah, come over and interview.

22 So, I went to the interview. Donna Rowe was the
23 lady who was conducting. She has given me a written
24 invitation. I have submitted in your office. And I asked
25 Donna: Are you sure everything is fine? She said: No
26 problem. You just go for interview. The appointment letter
27 will be ready.
28

1 So, I said: How do you know all this? She said:
2 Well, I cannot elaborate.

3 So, anyway, I went for the interview. Then,
4 Chairman of the three or four members -- I could not get into
5 the rooms -- so they said: Well, Rash, your name was not on
6 the list.

7 Then I says: Sir, I called you yesterday, and I
8 talked with your secretary in Sacramento half an hour ago,
9 and she said she called you this morning; everything is fine.

10 He said: Anyway, I cannot elaborate it. We could
11 not accept you in the examination.

12 Then I found out -- I came back and called. They
13 said the Toxic Substances Control Program gave bad reference,
14 and they reduced your salary, so we could not -- this is one
15 of the reasons we could not do it.

16 So, this is hurting me all the way. If I can get
17 out of this system with some reference, I'll have been more
18 than happy. But I could not do that. Any professional job,
19 they need a reference from an employer, and I got a bad
20 reference. If you want documentary proof, please read the
21 investigative report, or I can identify, come and sit down
22 and show the civil rights investigative report showed that
23 they gave me bad reference.

24 And my supervisor told me while he told me why he
25 would fire me. He said -- I said: Why don't you give me
26 reference and let me leave this place? He said: I cannot
27 give you reference; it is illegal.
28

1 And his supervisor assured me that, okay, end of
2 the year, when they already rejected the probation, yes, I
3 will give you reference. And I said: I asked my supervisor.
4 He would not give me reference. He testified. He conformed
5 [sic] in front of his supervisor that that was illegal to
6 give reference.

7 And in that meeting, the 16th November, 7:00 P.M.
8 or 7:30, I appealed to both of my supervisors that I don't
9 know anybody. I don't know how to go. Don't do that to me.
10 If I need to improve, I'll improve. If I need to work hard,
11 I'll do. Anything you want, but don't -- don't do such a
12 damaging thing to me.

13 But they indicated it's their bread and butter.
14 They have to do it.

15 And I do not understand all this interpretation.
16 If I put all these missing links together, like evidences of
17 evolution, and all these evidence is together, I can see some
18 missing links are out, but there is a link, and it all links
19 with Mr. Cunningham.

20 CHAIRMAN ROBERTI: Do you have anything further to
21 add?

22 DR. GHOSH: Yes, sir. The last and the final.
23 Thank you for listening.

24 EEOC make a decision strongly in my favor, and the
25 EEOC made a determination the Department, Mr. Cunningham of
26 the Department, and the Toxic Substances Control Program,
27 they discriminated against me, and they should reconcile.
28

1 And I replied them in writing that I am willing to
2 participate in this reconciliation meeting. And they tried,
3 and they were unsuccessful, so they recommended and that the
4 U.S. Justice Department is preparing a lawsuit against the
5 Toxic Substances Control Program and the peoples involved.

6 And I am willing to share that information if I see
7 what Mr. Cunningham has to say, if I get the opportunity.

8 CHAIRMAN ROBERTI: Thank you very much.

9 Mr. Cunningham, on this case, do you want to
10 respond?

11 MR. CUNNINGHAM: Yes, Senator.

12 Mr. Howard Hatayama, who is the Chief of the
13 Division, or Chief of the Regional Office, is here, that can
14 go into the particulars, if you wish.

15 But it sounds to me, listening very intently --
16 first of all, I deplore any discrimination, and I'm not party
17 to any discrimination.

18 It sounds to me, listening very carefully to
19 Dr. Ghosh's testimony, that the majority of his problems are
20 between he and his immediate superiors.

21 Senator, I'm sure you can appreciate, in managing
22 an organization of over 1,000 employees, you don't get
23 involved in every case as it comes forward until it gets to
24 the appropriate level.

25 As a matter of fact, Senator, when Dr. Ghosh
26 finished his probationary period, and I don't want to
27 embarrass him by bringing up some of the things that his
28

1 supervisors brought it, and it's -- since this is a public
2 meeting, but it is listed in a handout there -- but staff
3 wanted to roll him or fire him at the end of his probationary
4 period.

5 In reviewing the matter, when it came to my level,
6 I felt that that was a little too severe and recommended that
7 they come up with another alternative. That alternative was
8 the demotion to the assistant level.

9 I felt that, given what I knew about the case just
10 from the written record, and studying that written record,
11 that perhaps with additional training, the shortcomings that
12 staff saw could be overcome, and he could become a more
13 productive employee in the Department.

14 I can't get involved in every promotional
15 opportunity at the assistant and associate levels, Senator.
16 And I am deeply sorry that Dr. Ghosh has had to go through
17 this.

18 As I say, Mr. Hatayama has the particulars on this,
19 if you desire.

20 And for every employee that would come here and
21 testify against me, Senator, I could line up 50 or 100, I
22 guarantee you. I've never had my integrity, or my honesty,
23 or my sincerity questioned in 31 years of State service.

24 CHAIRMAN ROBERTI: Thank you, Mr. Cunningham.

25 SENATOR MELLO: Mr. Chairman, if I could ask.

26 CHAIRMAN ROBERTI: Yes, Senator Mello.

27 SENATOR MELLO: A few questions here.
28

1 As I read your handout and your testimony, it just
2 seems like you're unhappy with the fact that you were not
3 promoted or given a merit increase. And you were not given a
4 position that you sought.

5 You blame all of this, apparently, onto
6 Mr. Cunningham here.

7 As I go through this, it seems like -- well, first
8 I'm reminded, because I used to play a little football, but I
9 had some idols there: Vince Lombardi. Lombardi used to
10 coach the Green Bay Packers. And Knute Rockne used to coach
11 at Notre Dame. And they were great motivators of those
12 players. But they said: When things go wrong, you don't
13 blame the wind, or the rain, or the snow or something else.
14 Somebody's just out-tackling and out-blocking you. And a lot
15 of times, your answer lies right in the mirror.

16 And I'm just saying that I use that myself
17 sometimes, because I've had some failures, and I used to
18 throw the shot put and discus. And when I lost, I wasn't out
19 there training as hard as I should be, and so forth.

20 But one of the documents here from your appeal
21 hearing with the State Personnel Board, that was dated
22 December 22nd, '88, their findings were: The Appeals Panel
23 believes that Dr. Ghosh has submitted sufficient evidence
24 that he does not meet the 'Minimum Qualifications' for the
25 Staff Toxicologist, and they recommended that you proceed
26 with competitive examination.

27 Another one from the Department of Health Services,
28

1 again, when you were seeking a Staff Toxicologist position,
2 this was 8/07/87, they state the reason why your application
3 was rejected is:

4 "The Applicant's experience is not
5 directly related to probable health
6 hazards (as related to human
7 health), [and] the Applicant's
8 education (his Ph.D.) is not in a
9 closely related specialty."

10 I was reading about the many degrees you have, and
11 they are quite well, and they give you a lot of background
12 for areas of chemistry, human physiology, zoology, biology,
13 aquatic biology. Your Ph.D. is in aquatic ecosystems'
14 chemistry involving water quality.

15 So, all through this, I mean, all through this,
16 there's a lot of inadequacies here that have been stated on
17 behalf of your application that has not come from him
18 directly. It's come from the different State agencies in
19 which you seek.

20 I would just say --

21 DR. GHOSH: Can I answer?

22 SENATOR MELLO: Let me finish, if you don't mind.

23 I listened patiently to you here, and that's something I just
24 don't like, is when a witness tries to shut a Senator up, and
25 then expect to get their vote.

26 I just think that you're using the courts, which is
27 your right to appeal and file discrimination.
28

1 I'm a minority myself. I happen to be Portuguese.
2 Not listed as a minority, but I'll tell you what. As an
3 employer, which I've been all my life, employers look for
4 people out there who can really do the job. And I don't know
5 of anybody that would not hire a black, a Hispanic, and
6 Indian nationality, Asian, or what, if he's best qualified.

7 That's why I think, when these things come out,
8 you're either seeking a position you're not qualified for, or
9 you feel you can get redress through, as a lot of people do,
10 they file discrimination suits and so forth. And a lot of
11 times they're successful because it puts the employer in a
12 difficult position.

13 But I've gone through a lot of detail, reading both
14 yours and some of the other testimony here. You know, you
15 have a lot of good qualifications, but you can't win coming
16 in second. You've got to be the best in this business.

17 I have a son right now back at Berkeley pursuing a
18 doctorate degree. He's got two masters and a B.A. degree. I
19 only have three months of community college. But I'm
20 encouraging him. I'm lucky to be where I'm sitting here
21 today, competing in a world with a lot of lawyers, and
22 doctors, and people with a lot of degrees. I'm encouraging
23 everyone, and certainly my son, my wife and I are supporting
24 him to go and get that doctorate degree. Because in today's
25 world, you've got to be the best.

26 You know, you're way qualified, but I wouldn't put
27 all the blame on Mr. Cunningham. I would say that there's a
28

1 lot of agencies out there that are finding some inadequacies
2 in your application. I would just try harder and become more
3 competitive and be better qualified.

4 And if you find you can be the top person, nobody's
5 going to pass you up. I guarantee you that.

6 DR. GHOSH: Can I answer, sir, your question? I
7 have my attachment here.

8 CHAIRMAN ROBERTI: Yes, please.

9 DR. GHOSH: If you see Attachment G, about the
10 particular position you described, I put the Department's
11 opinion, the analyst's opinion, and I put the hearing
12 conducted by the State Personnel Board, their findings.

13 If I put only my side, if I don't put the other
14 side, I'll be doing injustice by my judgment.

15 So, I put here the analysis of Vikki Allinson that
16 sustained the rejection. The State Personnel Board conducted
17 a hearing on this, and they gave their findings that I not
18 only qualify for this position, I am well ahead of it, and I
19 put their findings, State Personnel Board.

20 So, as you specifically mentioned, this
21 toxicologist position.

22 SENATOR MELLO: That's one. I read --

23 DR. GHOSH: The Attachment J, on one page it says
24 that:

25 "The Appeals Panel believes
26 that Dr. Ghosh has submitted
27 sufficient evidence that he does
28

1 meet the 'Minimum Qualifications'
2 for the Staff Toxicologist
3 examination and that he should be
4 given an opportunity to present his
5 qualifications on a competitive
6 basis in the examination."

7 CHAIRMAN ROBERTI: Then you're saying that you
8 never were given that opportunity?

9 DR. GHOSH: No, they are conducting a hearing on
10 that.

11 CHAIRMAN ROBERTI: Did you, Mr. Cunningham, know
12 that the Equal Employment Opportunity Commission, while you
13 were still at the Toxics Board, was conducting an
14 investigation of Dr. Ghosh's case?

15 MR. CUNNINGHAM: I knew that Dr. Ghosh's case had
16 gone up to and through the State Personnel Board and the
17 appeal was denied. I had heard that he was going forward
18 with the EEOC, the U.S. EEOC.

19 I left the Department in October of last year,
20 Senator, and I've not been involved. And in fact, I was only
21 peripherally involved, signing the final document with the
22 State Personnel Board with Dr. Ghosh.

23 CHAIRMAN ROBERTI: I appreciate the fact that some
24 of the complaints and some of the apparent allegations in
25 EEOC's letter of determination are post your being at the
26 Toxics Board, but some some are during that time.

27 I understand chain of command, as you said. So
28

1 therefore, I recognize you cannot -- it would be impossible
2 to be on top of every personnel case.

3 But I would think, in the EEOC case, it's one that
4 you, at some point, would want to be on top of.

5 MR. CUNNINGHAM: Yes, sir.

6 CHAIRMAN ROBERTI: It appears, just on the surface
7 of this letter, that some of the requests that they were
8 making of you for which they seem -- I say "seem", because
9 it's awfully hard to garner all the information to make
10 charges that the Department really was not in compliance in
11 Dr. Ghosh's case -- do appear to have taken place while you
12 were in charge of the Department.

13 Why I say that is that, maybe at some point, and
14 I'm not making a categorical statement because I really want
15 to read this more and it's very difficult, you appear in this
16 case to have been in charge. And it does appear, I mean,
17 EEOC making a finding even of prima facie evidence, that is a
18 heavy finding.

19 MR. CUNNINGHAM: Yes, sir.

20 Can I ask the date on that, Senator?

21 CHAIRMAN ROBERTI: The date of their letter is
22 November 17th, 1989.

23 Now, I know you weren't in charge at that time,
24 but, for example, there is one paragraph here that says:

25 "Despite many letter, requests for
26 information and a subpoena of
27 October 27, 1988, June 6, 1989, and
28

1 June 28, 1989, and October 2, 1989,
2 Respondent has failed to produce
3 comparative data, and its
4 investigative report."

5 Respondent being the California Department of Health
6 Services.

7 It appears that there is noncooperation with EEOC.

8 MR. CUNNINGHAM: Senator, that particular issue was
9 being handled by my Deputy Director, Dave Willis, and our
10 legal staff. And I was not apprised until after I left that
11 this was even going forward to the EEOC.

12 I am totally unaware of any subpoenas, or any
13 requests for any information, Senator.

14 CHAIRMAN ROBERTI: Well, a couple of points, and
15 this I'm speaking only for myself, not for the Committee.

16 MR. CUNNINGHAM: Certainly.

17 CHAIRMAN ROBERTI: But I would like to hear, since
18 we never contacted personnel at Toxics, both pro and con,
19 because that's not our procedure -- they're not involved with
20 PERB -- I would like to do that.

21 The questions that have arisen, and I'm not saying
22 in my mind they necessarily would be conclusive against you
23 at all, but still I think it's important enough that I
24 personally would like to hear from others at that Department
25 as to personnel practices.

26 I just don't think that I can make light of an EEOC
27 finding that appears to have overlapped your period of being
28

1 in charge.

2 Recognizing that I, no more than you, would want to
3 be responsible for every action or omission of a subordinate,
4 it would be just an impossible situation, but this is
5 important.

6 I would hope, if we had that kind of finding, the
7 first thing that my staff would do would be to let me know
8 about it.

9 MR. CUNNINGHAM: Yes, sir.

10 CHAIRMAN ROBERTI: That kind of an investigation.

11 MR. CUNNINGHAM: As I said, I was -- I was advised
12 once it got to the State Personnel Board.

13 It was my understanding, and I can go back and
14 check the record, it was my understanding, Senator, that it
15 had not at that time gone forward to EEOC. And therefore,
16 there were no requests for subpoenas, et cetera.

17 True, some of the allegations could have happened
18 under my watch, and for those, you know, I have to stand up
19 and take some responsibility. But by the same token, I can't
20 undercut the authority of the immediate supervisors, and I
21 think --

22 CHAIRMAN ROBERTI: I recognize that.

23 MR. CUNNINGHAM: Yes, sir.

24 CHAIRMAN ROBERTI: I recognize that, but I think we
25 ought to know the extent to which you were apprised, should
26 have been apprised. And that's impossible to do, since we
27 have not asked for the information from anybody who was
28

1 involved in Toxics.

2 That's my own opinion, and it's not saying that I'm
3 prejudging the case, because I don't choose to do that.

4 Yes, Dr. Ghosh.

5 DR. GHOSH: Thank you, sir.

6 If you kindly look at the Attachment C, and there
7 are three letters from the Civil Rights Office, November 8,
8 and they gave me the discrimination complaint investigation
9 timeframes.

10 When I went to Dr. Cunningham -- Dr. Kizer's
11 office, then his secretary took me to the Civil Rights
12 Office, and they asked me to make a formal complaint, and I
13 did so. And they assured me everything will be done within
14 180 days.

15 So, I submitted my complaint in April, 1988, and
16 after gathering all the informations, Civil Rights Office
17 wrote me a letter that it is getting close to a year, but we
18 might be able to finish by December, 1988. And it's letter
19 one, that is November 8, give a timeframe that will finish by
20 May, and then March 3, they give the status of the complaint.
21 Why they could not finish. They wanted additional.

22 Another letter in April, 1989. And it's well
23 before Mr. Cunningham left the Department. And while I
24 called the second time why I could not meet him, then he --
25 his secretary told that you submitted a complaint to the
26 Civil Rights, so he would not be able to meet you until the
27 complaint investigation.
28

1 At that time, the investigator, Mr. Scott Richmond,
2 did not make any inquiry whatsoever with anybody within the
3 Department except myself. So, while I asked how Mr.
4 Cunningham knows that this is going on, then he checked it
5 out with Mr. Gary Hall, he's Mr. Scott Richmond's supervisor.
6 Mr. Gary Hall reported to another Chief Deputy Director --
7 what is his name, sir, Mr. Cubans?

8 MR. CUNNINGHAM: Stan Cubanski.

9 DR. GHOSH: Yeah.

10 So, he told Mr. Scott -- Scott Richmond told me
11 that Mr. Cunningham has learned from his colleagues, another
12 Chief Deputy Director who is supervisor of my supervisor.

13 So, it's not -- forgive me, maybe my interpretation
14 may not be correct, may be correct. Just I'm trying to add
15 something that you were not completely unaware of it. Even
16 if you say you don't know anything, because 1,000 employees,
17 I understand the problem, but it is my understanding, what I
18 know, that you were aware of it, state by state, plus the
19 moment I filed charge with EEOC, the EEOC send a notice that
20 say within 10 days they are -- by law, they had to serve you
21 the notice, and they did.

22 And three, four times, the preliminary reply they
23 received from the Department.

24 CHAIRMAN ROBERTI: If the Committee will bear with
25 me, I would like to put this over for a week.

26 The main reason is, this letter indicates charging
27 party has establishing a prima facie case of discrimination.
28

1 Prima facie case means it's a rebuttable case. So, to what
2 extent that's rebuttable, and even if it's a conclusive case,
3 to what extent it rebounds against Mr. Cunningham, I'd like
4 to find out from the EEOC. I just don't know.

5 SENATOR MELLO: Mr. Chairman, if I could just
6 comment.

7 CHAIRMAN ROBERTI: Yes.

8 SENATOR MELLO: I will certainly support your wish.
9 I understand Senator Petris has asked to put it
10 over also. He wanted to ask some questions.

11 I was just asking our consultant, Nancy Michel,
12 and, see, we're going to be leaving here. Two weeks from
13 today is the 4th. We're not meeting on that date, but I
14 don't know whether we can get this information back.

15 CHAIRMAN ROBERTI: I would hope to do it before we
16 break for summer if we can.

17 I would promise Mr. Cunningham he will have a
18 hearing and a vote, and if recommended onto the Floor, we'll
19 vote on the Floor.

20 DR. GHOSH: Thank you.

21 CHAIRMAN ROBERTI: I would assure you of that.

22 As I'm saying, this is important enough for me to
23 think to request further information. I'm not saying it's
24 indicative of my mind.

25 SENATOR MELLO: May I move your request that this
26 be put over and --

27 CHAIRMAN ROBERTI: Put over on the call of the
28

1 Chair, and I will try to expedite this before the summer
2 break.

3 SENATOR MELLO: Yes, no later than July 6.

4 CHAIRMAN ROBERTI: Well, I will try. If we can't
5 get the information, because we're actually asking the
6 federal government for the information, and also to extend
7 the inquiry as to both pros and cons to people who worked in
8 positions with Mr. Cunningham at other agencies of the State
9 government.

10 On call of the Chair, this will be put over, and I
11 will try to make it before the summer break.

12 MR. CUNNINGHAM: Senator, I pledge my full
13 cooperation in trying to get to the bottom of this, because
14 as I say, I do not condone any discrimination.

15 I had some statistics here that support that. Our
16 affirmative action hiring plan, where we committed to hiring
17 20 percent minorities, and in the Waste Management Engineer
18 area actually hired 47 percent minorities in one category; 32
19 percent in another; and 38 percent in another. And I'm not
20 talking clerical classes; we're talking engineers. And this
21 all happened under my watch also.

22 CHAIRMAN ROBERTI: Yes, that's certainly
23 information that we should know.

24 MR. CUNNINGHAM: Yes, sir.

25 CHAIRMAN ROBERTI: Thank you very much. It will be
26 on call, hopefully, before the summer break at the next
27 meeting.
28

1 MR. CUNNINGHAM: Thank you, Senator.

2 DR. GHOSH: Thank you.

3 CHAIRMAN ROBERTI: Thank you.

4 George R. Meese, Member of the Unemployment
5 Insurance Appeals Board.

6 Mr. Meese, let's see, I guess you've made your
7 opening statement already.

8 What I might do -- and we do have the text of the
9 hearing. I believe it was two weeks ago?

10 MR. MEESE: Three weeks, May 30th.

11 CHAIRMAN ROBERTI: What I will do is ask for those
12 both in support or in opposition to come forward very
13 briefly, and then if there's something that you wish to rebut
14 to, if that's all right with you. We'll do it that way.

15 Is there anyone here who would like to testify in
16 support? Yes, please come forward.

17 MR. McARDLE: Good afternoon. My name is Tim
18 McArdle. I'm the Chief Counsel for the Unemployment
19 Insurance Appeals Board.

20 You are right now being provided with two handouts
21 which address issues which bear upon Mr. Meese's
22 reconfirmation.

23 The first touches upon the issue of declining
24 claimant success rate on appeals to the Board. On May 30th,
25 the Committee on Industrial Relations provided you with what
26 I've labeled as Charts 1 and 2. It has come to my attention
27 that the data upon which these charts are based, which
28

1 incidentally, came from my office, is incorrect. That the
2 figures from 1986 forward are inaccurate in that they include
3 certain data on federal programs, which is not included in
4 the pre-1986 figures.

5 The reason for that is that the Board automated in
6 '86, and reports generated from that point forward included
7 this data.

8 However, the Federal Department of Labor and the
9 State EDD, which disseminated our reports, has backed it out
10 and Charts 3 and 4 reflect the correct data. They are the
11 same Charts as 1 and 2, but they include the correct data.

12 They also show a declining rate of claimant success
13 before the Appeals Board, but not nearly so drastic as
14 portrayed in the Committee's chart. And I think there are
15 several factors which can explain that declining rate.

16 Chart 5 is the same as Chart 4, but it includes the
17 percentage of claimant appeals from administrative law judge
18 decisions. As you can see, that goes down as well.

19 Chart 6 shows what our AOJs in the field do with
20 Department determinations which are appealed to them. And as
21 you can see, they are ruling more and more heavily in favor
22 of claimants. I think the inference there is that, first of
23 all, there were fewer meritorious appeals to be taken to the
24 Appeals Board; and secondly, that those of the appeals we do
25 see probably have already been correctly decided.

26 Finally, Chart 7 shows the unemployment rate in
27 California for 1980. As you can see, the profile on the
28

1 unemployment rate bears a rather striking resemblance to the
2 claimant's success on appeals to the Board. And I would
3 submit that the significance of that is that the claimants we
4 now have coming before the Board probably have fewer economic
5 reasons to be unemployed, and that they are less likely to
6 meet the eligibility criteria under the statute. Those who
7 do meet the criteria have already been identified by our
8 field judges.

9 The second point I would like to make is probably a
10 good deal more important than anything that these figures can
11 show, and it relates to the second handout which you have
12 been provided. Since Mr. Meese was appointed to the Board in
13 January of 1986, the Board has issued 26 precedent decisions.
14 These decisions are binding on our administrative law judges
15 as well as the Employment Development Department.

16 I won't repeat the individual decisions, but I have
17 the more important ones summarized in the first three pages,
18 and a chart on the fourth page showing the actual breakdown.
19 But, of the 26 cases, 17 involved Unemployment Insurance
20 eligibility issues. And of those 17, 12 were in favor of
21 claimants. And several of those 12 were very sweeping in
22 their scope. Only 5 are against claimants, and some of
23 those, even at that, put forth very limiting conditions on
24 the disqualification, which I've explained in the summary.

25 And finally, I'd like to point out that as the
26 Board's Counsel, I am aware of many, many dozens of cases
27 which Mr. Meese has reversed both our field and our staff
28

1 judges and ordered decisions reversing the previous decision
2 and ruling in favor of the claimants.

3 I am also aware of numerous hiring decisions that
4 the Board has made since '86. We've appointed four new
5 presiding administrative law judges; three of those have
6 extensive background with various legal aid organizations,
7 and that was not a negative factor at all in identifying
8 these individuals as the most qualified to assume these
9 important responsibilities.

10 So, I would urge your favorable consideration of
11 Mr. Meese's appointment, his reconfirmation, to our Board.

12 CHAIRMAN ROBERTI: Thank you very much,
13 Mr. McArdle.

14 Is there anyone else in support? We'll do support,
15 and then we'll do opposition.

16 MS. CANTERBURY: Hi. My name is Pat Canterbury,
17 Patricia Canterbury. I am currently the Assistant Executive
18 Officer for the Board of Professional Engineers and Land
19 Surveyors, and I'm here to speak on behalf of Mr. Meese.

20 He was my immediate supervisor when I was the
21 affirmative action EEO officer for the Department of Motor
22 Vehicles. In that role, Mr. Meese was extremely supportive
23 of outreach in the community, not only for civil service
24 employees, but seasonal employees, and he also sent me on
25 national surveys, such as the National Association of Public
26 Service Employees in Tennessee, and Akron, Ohio, to outreach
27 for the type of employees that we want to have in California.
28

1 I think that this shows a commitment from day one
2 in supporting the diversification of the citizens in
3 California, and he has continued that role in his present
4 employment.

5 I just wanted to say from people who had worked for
6 him at the Department of Motor Vehicles that he was extremely
7 concerned and interested in the future of California and has
8 demonstrated that constantly with the employees that he has
9 hired and the outreach that he has given.

10 CHAIRMAN ROBERTI: Thank you very much.

11 Any else in support?

12 MS. VALDEZ: Good afternoon, everybody. My name is
13 Manuela Valdez. I'm President of the Filipino Political
14 Association in Sacramento and vicinity.

15 I worked in the Department of Motor Vehicles for
16 seven years and already retired in 1987. I'm here to speak
17 on behalf of George Meese.

18 At the time George Meese was appointed Director of
19 the Department of Motor Vehicles, I was then the President of
20 the Filipino American State Employees Association. I
21 therefore had so many opportunities to talk to him and be
22 with him.

23 When George Meese took office, he directed the
24 affirmative action officers to schedule meetings with
25 different ethnic groups in the Department. He was anxious to
26 learn and to know these people working under him.
27
28

1 During these meetings, I came to know more about
2 this man. I found him to be a very pleasant person to talk
3 to. He showed so much concern for the problems facing the
4 employees of the Department. During his administration, he
5 would make his rounds all over the Department, stopping and
6 talking with employees, asking them about their work. Thus,
7 making all these employees feel happy to know that the big
8 boss actually cares. Everybody knows it.

9 There is such a big problem among discrimination,
10 among people that are being ignored, and we found this in the
11 person of Mr. Meese: he cared.

12 In conclusion, I wish to state that George Meese is
13 an ideal administrator who truly cares for the people working
14 for him. He's an honest man, fair and just in his dealing
15 with his fellow men.

16 I therefore say that he's a very competent
17 administrator.

18 Thank you, your honor.

19 CHAIRMAN ROBERTI: Thank you very much.

20 Is there anyone else in support? Then in
21 opposition, Mr. Henning.

22 MR. HENNING: Jack Henning, California Labor
23 Federation.

24 Perhaps we will make a statement in the future, but
25 we didn't know there would be additional testimony today. We
26 have already placed ours on the record. There are many units
27
28

1 throughout the state who would like to be here and speak
2 against this appointment.

3 Secondly, on the shadings of the statistics, it was
4 EDD that gave the data to the Senate Industrial Relations
5 Committee. We would respectfully suggest that the Senate
6 Industrial Relations Committee be consulted as to the new
7 interpretations by the House department.

8 MS. MICHEL: We have already made that request.
9 We've made a phone call and it is being checked.

10 CHAIRMAN ROBERTI: Have we gotten a response back?

11 MS. MICHEL: As soon as it was brought to our
12 attention here in the hearing that there was a discrepancy,
13 staff has called Industrial Relations and we are waiting for
14 a response from them as to whether there actually is a
15 difference in these figures, or whether, as they say, the
16 figures came directly from the Board.

17 We don't know when we will get a response from the
18 Industrial Relations Committee.

19 CHAIRMAN ROBERTI: If the appointment goes out, it
20 would have to stay on the Floor for two weeks. That's not by
21 rule, but by custom.

22 Is there any discussion or debate? Senator Mello.

23 SENATOR MELLO: Mr. Chairman, I know Senator Petris
24 is not here today. I was looking back over the record, and I
25 recall him making a response to put the nomination over at
26 that point. He wanted to do some further research.
27
28

1 May I ask his staff, Ms. Tanenbaum, if I could ask
2 you: Is Senator Petris still wanting to question further
3 Mr. Meese, or is he content to allow the matter to be taken
4 up?

5 MS. TANENBAUM: I think he's content to allow the
6 matter to be taken up.

7 He's interested in knowing what process the
8 Committee wants to take up in terms of Rules Committee
9 appointments in general as it goes on for the next few weeks
10 and months.

11 SENATOR MELLO: Thank you.

12 CHAIRMAN ROBERTI: Is there any other opposition in
13 the audience?

14 MR. ZENZ: Mr. Chairman and Members, Bob Zenz,
15 representing the California State Employees Association.

16 We are on record opposing this one for the same
17 reasons that I expressed earlier, and we support what
18 Mr. Henning has said.

19 Thank you.

20 CHAIRMAN ROBERTI: Thank you.

21 Any other opposition?

22 Mr. Meese, do you want to make any comments?

23 MR. MEESE: I don't believe so at this time, thank
24 you.

25 CHAIRMAN ROBERTI: Do I hear a motion?

26 SENATOR CRAVEN: Move.
27
28

1 CHAIRMAN ROBERTI: Senator Craven moves the
2 appointment of George Meese, Member of the Unemployment
3 Insurance Appeals Board, to the Senate Floor.

4 On the appointment, I would like to comment that I
5 intend to vote for Mr. Meese for the same reasons I indicated
6 when the State employees were up earlier. I think that was
7 on the Cunningham appointment, although I ended up putting
8 that one over.

9 It's the prerogative of the Governor to make
10 overlapping appointments, and that is something that we
11 strenuously fought for during the last administration, and I
12 reserve the right to vote no, and will vote no, when a
13 combination of philosophy, the lack of qualifications, and
14 the duration of the appointment converge, causing me to think
15 that's appropriate.

16 But I personally don't want to preside over a
17 double standard where I personally broke my back to let
18 Governor Brown have midnight appointments and don't give at
19 least 75 percent the same deference to Governor Deukmejian.
20 I might not work quite so hard for his December appointments,
21 but appointments he made much earlier on in the year.

22 I think you erode the power of the executive if you
23 say his whole last year is meaningless if the other party
24 controls the Senate. The presumption is going to be that
25 neither his appointments nor his philosophy can prevail on
26
27
28

1 those appointments. I think you erode the power of the
2 executive.

3 So, Senator Craven's motion is before us.
4 Secretary will call the roll.

5 SECRETARY WEBB: Senator Beverly.

6 SENATOR BEVERLY: Aye.

7 SECRETARY WEBB: Senator Mello.

8 SENATOR MELLO: No.

9 SECRETARY WEBB: Senator Petris. Senator Craven.

10 SENATOR CRAVEN: Aye.

11 SECRETARY WEBB: Senator Roberti.

12 CHAIRMAN ROBERTI: Aye.

13 The vote is three to one; confirmation is
14 recommended to the Floor.

15 MR. MEESE: Thank you very much.

16 CHAIRMAN ROBERTI: We'll break for three minutes.

17 [Thereupon a brief recess was taken.]

18 CHAIRMAN ROBERTI: The next appointment is Shirley
19 Ralston, Member of the Board of Governors, California
20 Community Colleges.

21 MS. RALSTON: Good afternoon.

22 CHAIRMAN ROBERTI: Good afternoon, Ms. Ralston.

23 We'll ask you the same question we ask all the
24 Governor's Appointees, and that is why you feel you're
25 qualified to assume this position.

26 MS. RALSTON: Well, I feel that I'm quite qualified
27 in as much as that I have been elected two terms to the Board
28

1 of Trustees of Rancho Santiago Community College, and I have
2 serve 8½ years on that Board.

3 Our district is very unique in Orange County.
4 Whereas, we have the highest income; we have the lowest
5 income. We have the largest Latino population, the largest
6 black population, and the largest Asian population.

7 So, I have also served on the CACC Board of
8 Legislation and Finance and have been intricately involved
9 with 1725, and have served on the subcommittee for personnel.
10 I'm currently before -- I had to resign because there's a
11 conflict, being a Member of the Board -- was co-chairman of
12 the subcommittee on amnesty and IRCA, and have been
13 orchestrating that advocacy in the State of California.

14 CHAIRMAN ROBERTI: Thank you very much.

15 Is there any testimony in support of Ms. Ralston?
16 In opposition?

17 SENATOR CRAVEN: Move Ms. Ralston.

18 CHAIRMAN ROBERTI: Ms. Ralston's appointment is
19 moved by Senator Craven.

20 I don't have any questions. Does anybody have any
21 questions?

22 Senator Craven's motion is before us. Secretary
23 will call the roll.

24 SECRETARY WEBB: Senator Beverly.

25 SENATOR BEVERLY: Aye.

26 SECRETARY WEBB: Senator Mello.

27 SENATOR MELLO: Aye.
28

1 SECRETARY WEBB: Senator Petris. Senator Craven.

2 SENATOR CRAVEN: Aye.

3 SECRETARY WEBB: Senator Roberti.

4 CHAIRMAN ROBERTI: Aye.

5 The vote is four to nothing; confirmation is
6 recommended to the Floor.

7 MS. RALSTON: Thank you, Senators.

8 CHAIRMAN ROBERTI: You're welcome.

9 The next appointment, this one, I think, we did
10 designate last week was for vote only, which is the
11 appointment of Mr. James Rude, Member of the Industrial
12 Welfare Commission.

13 Is Mr. Rude here?

14 MS. MICHEL: He was told he did not need to be
15 here. He's out of town for two weeks.

16 CHAIRMAN ROBERTI: Is there a motion?

17 SENATOR CRAVEN: Move.

18 CHAIRMAN ROBERTI: Senator Craven moves.

19 This, I might point out, is the employer
20 appointment.

21 Secretary will call the roll.

22 SECRETARY WEBB: Senator Beverly.

23 SENATOR BEVERLY: Aye.

24 SECRETARY WEBB: Senator Mello.

25 SENATOR MELLO: No.

26 SECRETARY WEBB: Senator Petris. Senator Craven.

27 SENATOR CRAVEN: Aye.
28

1 SECRETARY WEBB: Senator Roberti.

2 CHAIRMAN ROBERTI: Aye.

3 The vote is three to one; confirmation is
4 recommended to the Floor.

5 [Thereupon this portion of the
6 Senate Rules Committee hearing
7 was terminated at approximately
8 4:07 P.M.]

9 --oo0oo--
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

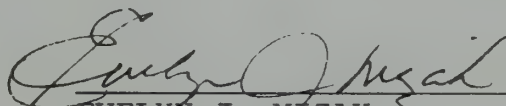
CERTIFICATE OF SHORTHAND REPORTER

I, EVELYN J. MIZAK, a Shorthand Reporter of the State of California, do hereby certify:

That I am a disinterested person herein; that the foregoing Senate Rules Committee hearing was reported verbatim in shorthand by me, Evelyn Mizak, and thereafter transcribed into typewriting.

I further certify that I am not of counsel or attorney for any of the parties to said hearing, nor in any way interested in the outcome of said hearing.

IN WITNESS WHEREOF, I have hereunto set my hand this 22nd day of June, 1990.


EVELYN J. MIZAK
Shorthand Reporter

500
R9
1990
no.21

HEARING
SENATE RULES COMMITTEE
STATE OF CALIFORNIA

DOCUMENTS DEPT.

JUL 30 1990

SAN FRANCISCO
PUBLIC LIBRARY

STATE CAPITOL
ROOM 113
SACRAMENTO, CALIFORNIA

WEDNESDAY, JUNE 27, 1990
2:55 P.M.

Additional copies of this publication may be purchased for \$7:00 per copy from:

Joint Publications
State Capitol, Box 942849
Sacramento, CA 94249-0001

Please add California sales tax. Make checks payable to STATE OF CALIFORNIA.

1 SENATE RULES COMMITTEE

2 STATE OF CALIFORNIA

3
4
5
6
7
8
9 STATE CAPITOL

10 ROOM 113

11 SACRAMENTO, CALIFORNIA

12
13
14
15 WEDNESDAY, JUNE 27, 1990

16 2:55 P.M.

17
18
19
20
21
22
23 Reported by:

24
25
26 Evelyn J. Mizak
27 Shorthand Reporter
28

APPEARANCES

MEMBERS PRESENT

SENATOR DAVID ROBERTI, Chairman

SENATOR WILLIAM CRAVEN, Vice Chairman

SENATOR ROBERT BEVERLY

SENATOR HENRY MELLO

SENATOR NICHOLAS PETRIS

STAFF PRESENT

CLIFF BERG, Executive Officer

PAT WEBB, Committee Secretary

RICK ROLLENS, Consultant on Bill Referrals

NANCY MICHEL, Consultant on Governor's Appointments

ALSO PRESENT

JOHN P. CAFFREY, Member
State Water Resources Control Board

CHRISTINE DIEMER-REED, Member
Housing Partnership Corporation

KATHRYN M. DRONENBURG, Member
State Board of Education

BRUCE JANIGIAN, Chair
Agricultural Labor Relations Board

SENATOR JIM ELLIS, Member
Agricultural Labor Relations Board

DOLORES HUERTA
United Farm Workers

DENNIS LOPEZ, Policy Analyst
MALDEF

JOHN F. HENNING, Executive Secretary-Treasurer
California Labor Federation, AFL-CIO

DONALD S. PRESSLEY, General Counsel
Agricultural Labor Relations Board

APPEARANCES (CONTINUED)

1 DOROTHY J. LEE, Member
2 State Board of Education

3 S. WILLIAM MALKASIAN, Member
4 State Board of Education

5 GERTI B. THOMAS, Member
6 State Board of Education
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

INDEXPage

Proceedings

1

Governor's Appointees:JOHN P. CAFFREY, Member
State Water Resources Control Board

1

Questions by CHAIRMAN ROBERTI re:

Necessity to Provide Water to Southern
California and not Erode Northern
California's Supplies

4

Contamination of Water Supply

6

Agricultural Water Conservation

8

Need to Reform Water Use

9

Need to Formulate Policy

9

Questions by SENATOR PETRIS re:

Contamination of 2500 Wells

11

Dispute between Board and EPA
involving Selenium

13

Status of Department's Scientists

13

Location of EPA Scientists

14

Underground Water Conservation

15

Publication of Pollutant Policy Document

16

Board Meetings

17

Drip Irrigation in Farming

18

Conservation Policies

19

Motion

19

Committee Action

20

INDEX (CONTINUED)

1		
2	CHRISTINE DIEMER-REED, Member	
3	Housing Partnership Corporation	20
4	Questions by SENATOR PETRIS re:	
5	Money Borrowed by Board	22
6	Participation of Private Sector	23
7	Goal in Terms of Money	24
8	Goal in Terms of Numbers of Units	24
9	Motion	25
10	Committee Action	25
11	Final Action	85
12	KATHRYN M. DRONENBURG, Member	
13	State Board of Education	26
14	Questions by SENATOR MELLO re:	
15	Position on Bilingual Education	27
16	Need for Statute Leading to Accountability, Uniform Credentialing and Expenditures	29
17	Motion	30
18	Committee Action	31
19	Final Action	85
20	BRUCE JANIGIAN, Chair,	
21	Agricultural Labor Relations Board	31
22	Statement by CHAIRMAN ROBERTI re:	
23	Politicization of Board	35
24	Allowing Governor Appointment Power	35
25	Response by MR. JANIGIAN	35
26	<u>Witness in Support:</u>	
27	SENATOR JIM ELLIS, Member	
28	Agricultural Labor Relations Board	36

INDEX (CONTINUED)

Witnesses in Opposition:

DOLORES HUERTA, First Vice President United Farm Workers	38
Uncounted Ballots from August, '89	39
Noncertification since May, '89	40
Gerawan Ranch -- Injunction Sought	40
Unilateral Settlements Costing Workers Millions of Dollars	41
Vessey Case	41
Discussion of Changes in Regulations re: Employee Witnesses	42
Impacts on Economy	43
DENNIS LOPEZ, Policy Analyst MALDEF	43
Concerns re: Affirmative Action Record	44
JACK HENNING, Legislative Advocate California Labor Federation	44
Rebuttal by MR. JANIGIAN	45
Establishment of Communication	46
Election Processing -- Gerawan	47
Triple E, etc. -- Petition for Reconsideration	47
Fast Track Methodology	47
Case Management Standards	48
Opposition to Worker Witnesses Rule Change	48
Statements by SENATOR PETRIS re:	
Necessity of Board as Advocate for Workers	49
Questions by SENATOR PETRIS re:	
Ability of General Counsel to Settle	51
Compliance Cases	51

INDEX (CONTINUED)

Questions by SENATOR PETRIS to MS. HUERTA re:

Settlement of Vessey Case	51
Initial Specification vs. Settlement Amount	52
Uncounted Election Ballots	52
Settlement for Less than Board's Specification	53
Conferring with Union on Settlement	53
Lack of Justification for Settlements	53
Rivcom Case Settlement	54

Questions by SENATOR PETRIS to MR. JANIGIAN re:

Vessey Case Never before Board	55
Active Participation & Cooperation of Union before Board Acceptance of Settlement	55
General Counsel's Discretion at Charge and Complaint Stage	55
Injunctive Relief in Gerawan	56
Process of Requesting Injunctive Relief	57
Need for Regional Director to Get Board Approval	57
Response by MS. HUERTA	57
Board's Denial of Injunction	58
Open Door for Communication	58
Board's Jurisdiction in Gerawan	59
Philosophy of DEUKMEJIAN Administration	60
Response by MS. HUERTA re:	
Board's Jurisdiction during Election Proceeding	61
Number of Board Decisions	62
Ballot Certification	62
Length of Time	63

INDEX (CONTINUED)

1		
2	Response by MS.HUERTA	63
3	Objections by Legal Counsels	63
4	Novel Law Objections	64
5	Statements by SENATOR ROBERTI re:	
6	Impressive Qualifications of Nominee	65
7	Reluctance to Give Governor Appointing Power	65
8	Statements by SENATOR PETRIS re:	
9	Prepared to Support Nomination	65
10	Need for Further Information	66
11	Testimony of DONALD PRESSLEY, General Counsel	
12	Agricultural Labor Relations Board	66
13	Unaware of Gerawan Situation	66
14	Questions by SENATOR PETRIS re:	
15	Awareness of Anyone at Agency to	
	Gerawan Situation	67
16	Availability of Records	67
17	Regional Director	67
18	Statements by SENATOR PETRIS re:	
19	Need to Question Regional Director(s)	68
20	Response by MR. PRESSLEY re:	
21	First Time to Hear of Gerawan Situation	69
22	Request by SENATOR PETRIS to Put Over Hearing	
23	for Further Information	69
24	Discussion	69
25	Questions by SENATOR PETRIS to MR. PRESSLEY re:	
26	Unilateral Settlements	70
27	Certification of Liability	71
28	Responsibility of General Counsel	
	to Affix Amount of Specification	72

INDEX (CONTINUED)

1		
2	Deductions from Gross Amount	73
3	Employer's Defenses	73
4	Litigation	74
5	Employers' Lack of Acceptance of	
6	Decisions	74
7	Lack of Penalties	75
8	Recent Settlement at Union's Demand	76
9	Request by SENATOR PETRIS re:	
10	Testimony from Regional Director(s)	77
11	Committee Action to Hold Hearing Over	77
12	DOROTHY J. LEE, Member	
	State Board of Education	78
13	Motion	84
14	Committee Action	85
15	S. WILLIAM MALKASIAN, Member	
16	State Board of Education	85
17	Motion	87
18	Committee Action	88
19	GERTI B. THOMAS, Member	
	State Board of Education	88
20	Motion	91
21	Committee Action	91
22	Termination of Proceedings	91
23	Certificate of Reporter	92
24		
25		
26		
27		
28		

P-R-O-C-E-E-D-I-N-G-S

--oo0oo--

CHAIRMAN ROBERTI: The next appointee appearing today, the first appointee, is Mr. John P. Caffrey, Member of the State Water Resources Control Board.

Mr. Caffrey, we'll ask you what we ask all the Governor's Appointees, and that is why you feel you're qualified to assume this position.

MR. CAFFREY: Good afternoon, Mr. Chairman and Senators of the Rules Committee. My name is John Caffrey. I'm an appointee to the State Water Resources Control Board, where I've been serving for the last four and a half months.

I'm honored to be here this afternoon and have the opportunity to resent to you my qualifications for this position.

I've been a career civil servant with the State of California for 23 years. I've served in seven State departments. Three of those tenures were special assignments from two governors: two from our previous governor, and one from our current governor.

This afternoon, I'd like to concentrate briefly on three areas, three assignments, three departments that I've worked in, that I think relate most closely to this appointment. Those are the Department of Parks and Recreation, the Department of Finance, and the Department of Water Resources.

From May, 1968 to May, 1973, a period of five years, I served in the Department of Parks and Recreation, where I

1 started as a junior analyst and eventually became senior budget
2 analyst and budget officer. There I had the opportunity to work
3 on a number of resources issues, natural resources issues
4 related to parks.

5
6 From May, 1973 to March of 1986, some 13 years, I
7 served in the Department of Finance. In the mid-'70s, I was
8 Chief of the Local Mandated Programs Unit. My responsibilities
9 there were to supervise the unit that was responsible for the
10 analysis of numerous bills, all bills that were introduced that
11 had fiscal impact on local government under SB 90. A number of
12 those, of course, were related to the environment and to the
13 water resources of the state.

14 In addition to that, in 1980, I was appointed to the
15 CEA IV Level as a Program Budget Manager. I -- among numerous
16 assignments there, I was responsible for the resources
17 departments and for the environmental boards. I worked on a
18 number of water issues with board members and their staff in
19 those years, including developing initial funding for proposals
20 for the Clean Water Bond Program, the Underground Tanks Program,
21 and the Toxics Pit Cleanup Program. I was also responsible for
22 the budgets of a number of water-related departments, such as
23 Fish and Game, the Department of Water Resources, the Wildlife
24 Conservation Board, the Bay Conservation Development Commission,
25 and the Tahoe Conservancy.

26 In 1984, I was appointed by the Director of Finance
27 as a charter member of the Tahoe Conservancy, a body, as you
28 know, whose responsibility it was to reduce developmental

1 pressure on the shore of the lake and to limit and improve --
2 limit discharge to the lake and improve its waters.
3

4 In March of 1986, Governor Deukmejian appointed me as
5 Deputy Director and then Chief Deputy Director at the Department
6 of Water Resources. I served there until appointed to the Water
7 Board last February. There I was responsible for all of the
8 Department of Water Resources administrative functions and
9 services, and I dealt with issues of water and power supply, dam
10 safety and inspection, flood management, water conservation, and
11 water quality. I also was responsible for administering the
12 Safe Drinking Water Bond program and other programs, such as
13 Proposition 44 for groundwater recharge and conservation.

14 Last year, I was the chief negotiator for the
15 administration for the program that was developed. We -- I
16 worked very closely with Assemblyman Isenberg and Assemblyman
17 Baker. The outcome of that legislation or that package of
18 legislation was the development of the Environmental Water Fund,
19 whose first priority is the enhancement of the waters at Mono
20 Lake. I've been active in securing proposed funding for
21 improving the upper Sacramento fisheries habitat.

22 In summary, I'd like to say, Mr. Chairman and
23 Members, that I feel the length and breadth of my experience in
24 California State government give me an understanding of the --
25 of water issues and how the system works. I understand the
26 importance of working closely with the Legislature.

27 And finally, and on a more personal note, I'd like to
28 say that I've lived in California all my life. I'm a third

1 generation Sacramentan. I've raised three children here, and I
2 care about the quality of California's waters and the proper
3 management of its waterways to the betterment of all the
4 beneficial uses of water, including the public trust.

5 I believe I'm a fair-minded person. I will conduct
6 myself in the representation of these values if I am confirmed.

7 Thank you, Mr. Chairman and Members. I'd be happy to
8 answer any questions you may have.

9 CHAIRMAN ROBERTI: Thank you very much, Mr. Caffrey.

10 Are there any questions of Mr. Caffrey?

11 Is there anyone here in support? Anyone in
12 opposition?

13 Then I think I have a few questions here.

14 I will also note that there had been some opposition
15 from the Pacific Coast Federation of Fishermen's Associations,
16 but that they withdrew their opposition.

17 We are currently, and the recent heat wave emphasizes
18 the problem, in a drought. There have been a number of
19 suggestions.

20 The Water Board has to take a leadership role in this
21 area on how we get water, how we provide for water to Southern
22 California, and at the same time, not erode our resources in
23 other parts of the state, which is a general overview
24 philosophical question, but other than which there are few more
25 important than that.

26 Los Angeles had a 112 degree record heat wave
27 yesterday, and we're on water conservation. The North is very
28

1 concerned about the preservation of its resources. I suspect in
2 the next two or three years, this question's going to eclipse
3 any other consideration, any other question, before us in sheer
4 importance.

5 I want to know what your position is on how we can do
6 both of those things.

7 MR. CAFFREY: Well, Senator, maybe I can best state
8 it as, the Board has recently published its Water Ethic.

9 I certainly agree with you that this is a very, very
10 difficult time to be in this position, and I do approach it with
11 some trepidation.

12 That Water Ethic states that there's a number of
13 things that we have to do in California to be more cognizant and
14 aware of the importance of all the beneficial uses of water,
15 including the public trust. It includes taking a more serious
16 look at what is really being done in a lot of parts of the state
17 already: water conservation. We have to look at water
18 reclamation as an alternative to the use of potable water for
19 certain purposes, such as irrigation, et cetera.

20 We're actively working with the Environmental
21 Protection Agency right now to make sure that the standards that
22 are developed for water reclamation are reasonable and fair, so
23 that in an arid state like California, we can use those.

24 We have to look at a number of other possibilities.
25 We have now, my understanding, the Department of Water Resources
26 is, with some success, developing the Kern Water Bank, which is
27 an underground storage capability which is very considerate of
28

1 the environment.

2
3 There's another project that the Department of Water
4 Resources is now looking at. It's Los Banos Grandes on the west
5 side of the San Joaquin Valley, behind the current Los Banos
6 Reservoir. There's some very sensitive environmental issues
7 there, so it's not going to be easy.

8 There's a lot of very critical questions that we have
9 to look at in trying to find this balance. It's going to take a
10 lot of work.

11 CHAIRMAN ROBERTI: Yes, thank you.

12 In other words, you're trying to find other
13 alternatives.

14 MR. CAFFREY: There's one other thing I just thought
15 of that I'd like to mention, if I could, Senator.

16 The Board is taking a proactive role in reviewing all
17 of the water rights in the state, including the water projects,
18 to be sure that there is a reasonable use of water in all the
19 beneficial uses.

20 CHAIRMAN ROBERTI: Another major issue is the
21 contamination of our water supply. If I had to think of any one
22 environmental question that needs to be addressed, I would
23 suspect that if the public were asked what they think is the
24 most important, and maybe we haven't addressed it to the extent
25 that we should, it's water contamination, especially groundwater
26 supply contamination.

27 What are your proposals on that?

28 MR. CAFFREY: Well, there's no question that that is

1 a critical problem, and there are issues across the state.
2 Perhaps the most critical one now is the contamination of the
3 San Gabriel groundwater basin. We're taking an active role
4 there. We're developing a paper on that. We're working with
5 EPA, and hopefully, we're going to come up with the funding and
6 the plan to solve that problem.
7

8 But in general, probably the most critical area where
9 we can deal with this, if we're going to deal in one spot, is
10 the Bay-Delta, because that represents 40 percent of the --
11 40-50 percent of the state's watershed.

12 And I'm very happy and proud to tell you, Mr.
13 Chairman, that last Thursday, the Board issued, with an
14 unanimous affirmative vote, its Pollution Policy Document for
15 the Bay, and it was received with great compliment from the
16 environmental groups in the Bay Area. What it does is, it
17 identifies the 15 most serious contaminants that are -- that
18 exist in the Bay and the Delta right now -- I'm talking about
19 the heavy metals and those kinds of things -- and sets out a
20 policy on how to deal with them, including a mass emissions
21 strategy. I think that's an important step.

22 In the next few months, the Board will also publish,
23 after hearing, its plan for enclosed bays and estuaries and
24 inland surface waters. There we are dealing with 68
25 contaminants. We'll set numerical standards for those. We're
26 going through those hearings now, and takes care of a
27 significant portion of what the Environmental Protection Agency
28 is wanting the state to do.

1
2 We also recently, in March, produced our ocean plan
3 and set the highest standards in the nation for dioxin. And the
4 Pollution Policy Document that we just published will --
5 actually sets similar for the Bay, dioxin standards, and sets as
6 a goal that there be absolutely no dioxin in discharges by the
7 year 2000, and immediately requires that it -- that very high
8 standards be set, and that monitoring be done for sediment
9 accumulation and bio accumulation.

10 So, I feel that the Board is starting to take a very
11 proactive role in these areas, and I feel that I can contribute.

12 CHAIRMAN ROBERTI: Has the Board come up with, in
13 another related area, a proposal on conservation of use,
14 especially in our agricultural industry?

15 MR. CAFFREY: The Board does not have a proposal per
16 se, but we are working with the agricultural community where
17 ever possible. We are -- I know you're aware of the Kesterson
18 problems and what's going on there.

19 We are trying to work with agriculture. We're
20 looking at a number -- through our granting capabilities, monies
21 that come from the federal government, the Environmental
22 Protection Agency, we're looking at some options. One of them,
23 for instance, is something called agro-forestry, where you can
24 -- this goes to the selenium problem. It's not necessarily
25 conservation, but to the extent that you preserve the waters,
26 that's a conservation measure.

27 I think that the agricultural industry is making an
28 effort. I don't know if it's the effort that the other

1 beneficial uses would like to see in terms of its strength, but
2 I think the effort is there, and we'd like to work with the
3 agricultural interests.
4

5 CHAIRMAN ROBERTI: Just to throw this out, I really
6 think their effort is very, very weak.

7 First claim on water that's going to be moving south
8 goes to the urban areas. There hasn't been a heavy competition
9 for that water until, I would suggest, now.

10 When the urban areas make the claim on the water,
11 agriculture will have -- without reforms in their water use,
12 will only harm themselves.

13 MR. CAFFREY: You're quite correct, Senator. That's
14 happening right now.

15 As a matter of fact, with the court decisions
16 affecting diversions from Mono Lake, it is -- the City of Los
17 Angeles will now have to order a significant portion of its
18 water from the Metropolitan Water District. That means the
19 Metropolitan Water District will get closer to their maximum
20 entitlement, and that means, under the State water contracts,
21 that the first -- as the contracts are written, the first
22 beneficial use of water that suffers, so to speak, is
23 agriculture. They will take percentage reductions.

24 CHAIRMAN ROBERTI: So, I can't think of anything more
25 important for you to formulate a policy on than that, if for no
26 other reason than the evident self-interest --

27 MR. CAFFREY: I certainly agree with you there.

28 CHAIRMAN ROBERTI: -- of California agriculture in

1 this area.

2
3 MR. CAFFREY: I will take your admonition to my
4 fellow Board members.

5 CHAIRMAN ROBERTI: It's the most important issue. I
6 don't know of any issue, and this has not been my personal
7 issue, but I can't think of any issue more important. It struck
8 me home when I went home, not just because of the heat, but the
9 city's on water conservation, which would help. If it weren't,
10 it would help diffuse the scorching effect of the heat.

11 At some point, unless your group shows the
12 leadership, we will have, you know, figuratively, a revolution
13 or civil war -- I don't mean literally -- as far as people's
14 attitudes.

15 We have to try to waylay that, divert it, do
16 something. Tell people that a stitch in time saves nine,
17 starting, I would say, with California agriculture.

18 Other countries have experimented on drip irrigation
19 that we haven't at all here.

20 So, I offer that very strongly.

21 MR. CAFFREY: It's well taken, Mr. Chairman, and I
22 will carry that message back to my fellow Board members.

23 I will try, as a Board member, to effect those kinds
24 of policies and changes.

25 CHAIRMAN ROBERTI: Any other questions? Senator
26 Petris.

27 SENATOR PETRIS: I've been waiting a long time for
28 some overall aggressive water program from the Board. I really

1 haven't seen it.

2 I don't know what the Board does. I know you're very
3 busy. You have a lot of problems acting as a referee, I guess,
4 between competing interests for quantity of water and for
5 quality. I guess the emphasis on your Board is quality as well.

6 Let me go over a couple of areas. To continue with
7 the contamination question raised by Senator Roberti, there is a
8 lot of different geographic areas involved. I won't cover all
9 of them.

10 One of them is the monitoring that was done in 1984,
11 where it was discovered that about 2500 wells were found to be
12 contaminated with DBCP. The Board has not come up with a plan
13 to tackle that problem. I don't know whether you're waiting for
14 EPA to do it or push you, or what, but that seems very strange
15 to me, because at the time this report came out, it was kind of
16 alarming.

17 So, my question is, what, if anything, is happening
18 at the Board level to tackle that particular problem, which, I
19 gather, is not limited to those 2500 wells. There's probably a
20 lot more. Is there any overall comprehensive plan to tackle
21 that?

22 MR. CAFFREY: Yes, Senator, there is.

23 The Environmental Protection Agency has identified
24 129 pollutants that we are dealing with in terms of our surface
25 water-groundwater plans, and our inland bays and estuaries
26 plans. We're setting standards, but we're not only in the
27 process of setting standards for these, we're also designing

1
2 into these plans the methodology as to how to monitor for these,
3 and what scientific processes to go through in the monitoring.

4 I mentioned to Senator Roberti a moment ago our
5 Pollution Policy Document for the Bay Area, which we just passed
6 last Thursday in our meeting. Mr. Craig Harris was there from
7 the Save the Bay Association and also representing the Citizens
8 for Better Environment, and he complimented the Board as -- for
9 this as being a very important first step in getting a handle on
10 some of these very critical toxins.

11 In that plan is designed a policy for a mass
12 emissions strategy. And that strategy is a way of dealing with
13 some of these heavy metals that are being discharged in a -- so
14 that we can deal with sediment accumulation and fish tissue
15 biomass accumulation.

16 A lot of times in the waters, in the water column
17 itself, you can't detect these things because they're in such
18 minute amounts. But they begin to accumulate in the fishery or
19 in the sediment, and so we're developing a plan that includes a
20 mass strategy to deal with that kind of -- monitoring on that
21 basis, not just the water column, but the sediment in the fish.

22 It is a very complex problem, and there's a lot of
23 frustration about it, but we're learning more about these
24 nonconventional pollutants as we go along. Some of them are
25 very critical.

26 Speaking for this Board member, I want to be
27 proactive in finding solutions to these problems that are
28 balanced, that protect the waterways.

1 SENATOR PETRIS: Selenium is one of the problems.
2
3 There was a dispute for some time between the EPA and the Board
4 as to what should be done.

5 Has that been resolved?

6 MR. CAFFREY: No, it has not.

7 SENATOR PETRIS: What's the nature of the
8 disagreement?

9 MR. CAFFREY: Well, what it is, the Board has worked
10 with the agricultural community in their drainage problems in
11 the San Joaquin. We have set a standard under the
12 Porter-Cologne Act of 10 parts per billion of selenium.

13 The EPA, because of their interpretation of the Clean
14 Water Act, feels that it should be 5 parts.

15 Our scientists tell us that 10 is very good and
16 adequate protection, and that it is attainable through current
17 technology by the agricultural community there.

18 The Porter-Cologne Act, we are in compliance with the
19 Porter-Cologne Act.

20 We are working with EPA to try and resolve this
21 dispute. We have not resolved it yet.

22 SENATOR PETRIS: Are your scientists in-house, or are
23 they consultants from the outside?

24 MR. CAFFREY: They're in-house, but we also -- we
25 also hold hearings and consider the input from -- from other
26 sources.

27 Our proceedings are quasi-legislative for water
28 quality, and they're quasi-judicial for water rights. And we

1 somewhat follow the rules of court in water rights proceedings,
2 in the quasi-judicial proceedings. It's a very, very open
3 process, and we invite any and all who have something to
4 contribute to participate.

5 And many, many interests that come before the Board
6 have their own scientific experts.

7
8 SENATOR PETRIS: What about the EPA? Do they have a
9 separate group of scientists?

10 MR. CAFFREY: Yes, they do, and they -- we work --

11 SENATOR PETRIS: They disagree with your --

12 MR. CAFFREY: We disagree with them from time to
13 time, Senator, but I think, for the most part, we work very,
14 very well with them.

15 Our Executive Officer, Mr. Baetge and his staff, have
16 worked very hard in their relationship with EPA, and I think
17 there's a lot of good will.

18 Of course, you hear more about the things that we're
19 having some difficulty resolving, but there's an awful lot of
20 things that we're able to work out.

21 SENATOR PETRIS: Where do they hang out? Are they
22 stationed in California, the EPA scientists?

23 MR. CAFFREY: Well, there's a -- I think the Region 9
24 office is in San Francisco, but that's their Western Regional
25 Office for a number of states.

26 SENATOR PETRIS: I always thought that was just
27 administrative. They have their scientists there, too?

28 MR. CAFFREY: Their scientists, I believe, are there.

1
2 They work closely with our staff, and they come to a lot of our
3 meetings and hearings and participate.

4 SENATOR PETRIS: They must be nearby.

5 MR. CAFFREY: They are in the San Francisco area,
6 yes.

7 SENATOR PETRIS: What about groundwater? One of the
8 problems we've had over the years is lack of enough commitment
9 to conservation. Now we've had a few dry years, and there's a
10 little more attention, but as soon as we get a wet year, that
11 goes down the drain, if you'll pardon a bad pun.

12 [Laughter.]

13 SENATOR PETRIS: It seems to me that everytime the
14 city boys come up with a plan to urge the farm boys to adopt a
15 comprehensive groundwater conservation plan, they absolutely
16 oppose it. We've had a lot of battles in the Legislature over
17 the years.

18 I've never understood why. I've been told it's
19 because they get water so cheap compared to other users that
20 they don't care much about it. They don't feel the need because
21 it's so readily available, and they don't see the need to take
22 the time and the money and whatever effort might be required to
23 do it.

24 Is there any plan from the Board emphasize
25 underground conservation?

26 MR. CAFFREY: Well, in terms of groundwater
27 conservation, yes. Part of the Ethic that we have just
28 published in our Pollution Policy Document, and that is in the

1
2 currently issued draft of what we're studying in the Bay-Delta,
3 contains a section on what is called conjunctive use. It's a
4 way of trying to manage our groundwaters and our surface waters
5 in conjunction with each other.

6 It recognizes that in dry years, we have to draft
7 from the ground. But it also recognizes that we have to put it
8 back in wet years, because it -- our ground waters are a
9 significant environmental treasure of our state, and if we
10 degrade them or deplete them, we're going to be in serious
11 trouble.

12 So, I think all of this is a part of the education
13 process. And I really feel that, while they are rather
14 protracted, and they are the cause of frustration, sometimes, of
15 a lot of people, the hearings that the Board is holding does
16 provide a forum for people to come together and to try and
17 grapple with these problems.

18 So, I'm hopeful that the process that we're now going
19 through on the Bay-Delta is providing that kind of a forum, and
20 by our publishing this Water Ethic, we'll cause people to think
21 about it and approach it very seriously.

22 SENATOR PETRIS: Has that been published yet?

23 MR. CAFFREY: Yes, sir, it is. I can get a copy to
24 your office.

25 SENATOR PETRIS: I probably have one, but just to be
26 sure --

27 MR. CAFFREY: I will do that, Senator.

28 SENATOR PETRIS: When was it put out?

1
2 MR. CAFFREY: We just put it out, I think it was last
3 Friday. It's what's called our Final Draft. This is on the --
4 this is actually the Bay-Delta Temperature and Salinity Plan.

5 We're going to go into our last session of what we
6 call workshops this August, and then we will finally publish
7 that document at the end of this year. And then we will go in,
8 next year, to what we call our scoping phase, so we will look at
9 the various alternatives on how we're going to effect these
10 standards.

11 SENATOR PETRIS: If it came out Friday, chances are I
12 don't have it, so I'd appreciate it if you'd --

13 MR. CAFFREY: I'll make sure that you and all the
14 Members of the Rules Committee get a copy, Senator.

15 SENATOR PETRIS: I had a couple others which have
16 escaped my mind, which I guess you wouldn't mind.

17 How often does the Board meet?

18 MR. CAFFREY: The Board has a monthly meeting, but in
19 addition to that, we hold hearings.

20 SENATOR PETRIS: You also have committees within the
21 Board?

22 MR. CAFFREY: Well, we have -- what we do is, we
23 allow individual Board members to sit in water rights
24 proceedings. Those are -- in those meetings, of course, you
25 will have an individual member attending.

26 But generally we meet as a body. We meet once a
27 month, and that is where we vote, but we also hold hearings
28 where we create a record.

1
2 And we also hold something called workshops where we
3 sometimes create a record, but the workshop is a very informal
4 setting, quasi-legislative, where everybody comes in and works
5 on issues. Everybody comes and and gets a chance to basically
6 talk about their own point of view.

7 SENATOR PETRIS: In a confirmation hearing of a
8 previous nominee, I asked about drip methods in farming. And I
9 was told that it's a great idea, but it costs the farmers too
10 much to buy all the gear.

11 Is that still the case? In some places, they feel
12 it's not economic. I guess it depends on how tough the water
13 shortage becomes.

14 MR. CAFFREY: Exactly. I think it depends on the
15 farm operation itself. It depends on the willingness of the
16 particular farmer, and most assuredly, as you point out,
17 Senator, it depends on the price of water. Water is the most
18 elastic thing that I can think of in terms of economics. The
19 less there is of it, the more inclination there is to spend
20 money to preserve it and save it.

21 So, as serious a thing as this drought is, oftentimes
22 it takes something like this to remind us all of how precious
23 water is. And sometimes, out of these kinds of situations, come
24 the willingness.

25 I know that in the drought, the cities that employed
26 strict conservation measures, while people slack off after the
27 drought, there still is some record -- there still is a
28 propensity in some degree for people to maintain that

1 conservation ethic.

2
3 SENATOR PETRIS: Well, that's my last point. That's
4 why my first question was on conservation policies.

5 I know in my area, the response of the public has
6 been phenomenal. East Bay Municipal Utility District, when we
7 had our first bad year eight or nine years ago, they set a goal,
8 and they kept us informed as consumers as to why they were doing
9 it, and why it was necessary, and what the program was. And
10 they set a goal of X percentage below average use over a period
11 of time. And the public exceeded that goal, and ever since
12 then, has maintained a lot of the good habits. The District is
13 very pleased with that.

14 I think it indicates that if there is a leadership
15 role taken by the responsible agency, keeping the public
16 informed and continuing its appeal, people really do respond.

17 That's why I would hope that your Board -- I know
18 it's more difficult because you've got a bigger area to worry
19 about, but to the extent that you can make that known and
20 publicize the goals, I think you'll get a lot of cooperation
21 from the public. Everybody feels the pinch.

22 MR. CAFFREY: They sure do.

23 SENATOR PETRIS: Thank you very much.

24 MR. CAFFREY: Thank you, Senator.

25 CHAIRMAN ROBERTI: Thank you, Senator Petris.

26 Any other questions?

27 SENATOR CRAVEN: Move Mr. Caffrey's nomination to the
28 Senate Floor.

1
2 CHAIRMAN ROBERTI: Senator Craven moves Mr. Caffrey's
3 nomination to the Floor.

4 Secretary will call the roll.

5 SECRETARY WEBB: Senator Beverly.

6 SENATOR BEVERLY: Aye.

7 SECRETARY WEBB: Senator Mello.

8 SENATOR MELLO: Aye.

9 SECRETARY WEBB: Senator Petris.

10 SENATOR PETRIS: Aye.

11 SECRETARY WEBB: Senator Craven.

12 SENATOR CRAVEN: Aye.

13 SECRETARY WEBB: Senator Roberti.

14 CHAIRMAN ROBERTI: Aye.

15 The vote is five to zero; confirmation's recommended
16 to the Floor.

17 MR. CAFFREY: Thank you, Senators, very much.

18 CHAIRMAN ROBERTI: Congratulations.

19 The next appointment is Christine Diemer-Reed, Member
20 of the Housing Partnership Corporation.

21 We'll ask you also what we ask all the Governor's
22 Appointees, and that is why you feel you're qualified to assume
23 this position.

24 MS. DIEMER-REED: Thank you.

25 I am Christine Diemer-Reed, and as you probably know,
26 I am currently serving on the California Housing Partnership
27 Corporation, which I'd like to call the CHPC as we speak.

28 And as Senator Petris knows, because he carried the

1 bill that established this corporation, it is a corporation that
2 serves the purpose of preserving current low and very low
3 housing units in the State of California.
4

5 It is a nonprofit, independent corporation; however,
6 it does have legislative appointees, and we are required to file
7 FPPC statements. But apart from that, we are basically
8 independent from most of the State departments.

9 We did receive a \$500,000 loan pursuant to the
10 legislation which is from the Department of Housing and
11 Community Development, and we are currently under contract with
12 them as far as the terms of that contract to repay the \$500,000
13 within so many years.

14 Our emphasis, according to the legislation, is on
15 apartments, and it's on very low and low income.

16 I believe that I'm qualified to serve on the Board
17 and be its chairperson because I was the Director of the Housing
18 Department here in the State of California since 1986, having
19 served as the acting Director and then the Director of HCD.
20 That Department oversees the numerous low and very low income
21 housing programs the State has, and I was involved in the
22 administration of those programs, and the allocation of money,
23 and served in numerous meetings regarding those programs.

24 I've participated in a lot of negotiations with some
25 of you and other Members of the Legislature concerning low and
26 very low income housing programs, including your, Senator
27 Roberti, discussions on Propositions 77 and 84, which eventually
28 made it to the ballot and passed.

1
2 I previously served at the Business, Transportation
3 and Housing Agency as the Deputy Secretary for Housing since
4 1983, and was also involved with all of the low and very
5 low income housing constituents and interested parties in that
6 capacity as well.

7 I am familiar with the issues and the needs for low
8 income housing in the State of California based on these
9 experiences, and I continue to express an interest and be
10 personally involved with these issues in my current job, which
11 is now, since last July, I am now with the Building Industry
12 Association in Orange County and serve as the Executive
13 Director. We have established a nonprofit which is called Home
14 Aid, and it is a transitional housing program which I am proud
15 to be involved with down there in Orange County.

16 I also serve on several nonprofit corporations aside
17 from this one which are non-paid, voluntary, local, nonprofit
18 organizations that still serve the same constituents that our
19 CHPC serves.

20 I have served as a member of the Board since 1988,
21 and I would sincerely enjoy continuing to serve on the CHPC
22 Board of Directors.

23 CHAIRMAN ROBERTI: Thank you very much.

24 Are there any questions? Senator Petris.

25 SENATOR PETRIS: The Board has borrowed a half a
26 million dollars, did you say?

27 MS. DIEMER-REED: Yes.

28 SENATOR PETRIS: How many units do they expect to

1
2 cover with that?

3 MS. DIEMER-REED: Senator, that will be for -- we
4 will not -- we don't allocate money. That is basically for
5 startup and operations of this corporation. And we have -- we
6 are keeping track of that budget pretty closely with the
7 Department, but it's not for allocating dollars.

8 It's basically for us to work with corporations in
9 the State of California and get their commitment for tax credit.
10 That's basically what this corporation's working on at this
11 point.

12 SENATOR PETRIS: How much have you been able to
13 raise, or what kind of participation have you been able to get
14 from the private sector?

15 MS. DIEMER-REED: We -- now, we've only been in
16 existence, so to speak, for about two years. And the first year
17 was the actual start up: corporation bylaws, et cetera.

18 So, in the last year, since we have our own Executive
19 Director now who has been serving with us for a year, we entered
20 into a contract with an entity called California Equity Fund,
21 which is a subsidiary of LISK, and we are joint venturing to
22 raise money. And that corporation has raised, I believe, about
23 \$10 million so far. That's why we are joining hands with them
24 to join forces.

25 That's a long way of saying we haven't raised -- we
26 haven't gotten a commitment yet, but we have just signed, in the
27 last six months, this contract. And now we are meeting with
28 corporations and getting them interested in this tax credit. In

1 fact, we've met with the California Chamber of Commerce, and
2 have set up tours and meetings with savings and loans and other
3 institutions in California, and they are becoming very
4 interested in it, and I think we have a good shot at it.

5 SENATOR PETRIS: What's your goal in terms of money?

6 MS. DIEMER-REED: Our goals -- well, my goal, at
7 least as Chairman, in the next -- by December, is to raise
8 perhaps \$8-12 million in commitments from the private sector.
9 These are commitments for the tax credits where each company
10 pays about a million dollars or more.

11 SENATOR PETRIS: Are these grants or loans?

12 MS. DIEMER-REED: They are -- actually, the private
13 sector is actually investing in a tax credit, so there's no --
14 the only government money is the tax credit, which is the
15 federal tax credit and there is a small state tax credit that's
16 a companion tax credit.

17 SENATOR PETRIS: In terms of numbers of units, what's
18 your goal?

19 MS. DIEMER-REED: It's always hard to say, but I can
20 say that in the last year, just starting, we feel that we've
21 impacted about 2-3,000 units, and that's just technical
22 assistance and syndications.

23 I don't have an answer for you on how many we can
24 expect through the \$8-12 million, but --

25 SENATOR PETRIS: Well, whatever it is, it's more than
26 we would have had before, I guess. Right?

27 MS. DIEMER-REED: It potentially leverages -- I can't
28

1 even guess.

2 You're right, yes. It's better than nothing.

3 SENATOR PETRIS: You do a lot of leveraging with it.

4 Thank you.

5 CHAIRMAN ROBERTI: Are there any other questions of
6 Ms. Diemer-Reed?

7 Is there any opposition in the audience? Do I hear a
8 motion?

9 SENATOR CRAVEN: Move Ms. Diemer-Reed's nomination to
10 the Floor.

11 CHAIRMAN ROBERTI: Senator Craven moves Christine
12 Diemer-Reed's nomination as member of the Housing Partnership
13 Corporation to the Floor.

14 Secretary will call the roll.

15 SECRETARY WEBB: Senator Beverly. Senator Mello.

16 SENATOR MELLO: Aye.

17 SECRETARY WEBB: Senator Petris.

18 SENATOR PETRIS: Aye.

19 SECRETARY WEBB: Senator Craven.

20 SENATOR CRAVEN: Aye.

21 SECRETARY WEBB: Senator Roberti.

22 CHAIRMAN ROBERTI: Aye.

23 The vote is four to zero.

24 Congratulations.

25 Senator Mello moves a call so Senator Beverly can be
26 recorded. Without objection, such will be the order; the call
27 is on.
28

1 Congratulations.

2 MS. DIEMER-REED: Thank you very much.

3 CHAIRMAN ROBERTI: The next appointment is Kathryn M.
4 Dronenburg, Member of the State Board of Education.

5 MS. DRONENBURG: Good afternoon, Senator.

6 CHAIRMAN ROBERTI: Hi.

7 We'll ask you the same question, why you feel you're
8 qualified to assume this position.

9 MS. DRONENBURG: Well, I feel that I'm qualified to
10 assume this position for several reasons.

11 First of all, I'm the parent of three children, along
12 with my husband Ernie, and they are very --

13 CHAIRMAN ROBERTI: Member Dronenburg is in the room
14 with us.

15 It's good to have you with us.

16 MS. DRONENBURG: Thank you.

17 My children have experienced the gifted programs.
18 They've experienced the regular education programs, and also I
19 have a daughter in the Special Education program.

20 Myself, I am a product of the California school
21 system from kindergarten all the way through post college
22 experience. I've been a teacher in the California education
23 system.

24 I have been involved in the education system in a
25 number of local community advisory committee groups. I have
26 just finished chairing a school site council. I have also been
27 chair of the Special Education Advisory Committee, and
28

1 especially this latter gives me particular practical experience,
2 because the State Board of Education reviews a great many
3 waivers and other items that specifically have to do with
4 Special Education. So, that background is very practical.
5

6 Also, that experience for six years on the Special
7 Education Commission, has convinced me that a system that can
8 teach my daughter, with an IQ of 30, to read really can teach
9 every child to read, and I believe that strongly, not only to
10 read, but to have an improved quality of life.

11 CHAIRMAN ROBERTI: Thank you very much,
12 Ms. Dronenburg.

13 Are there any questions? Senator Mello.

14 SENATOR MELLO: Mr. Chairman, I'd just like to ask
15 her, we did have a chance to meet and talk, and I just want to
16 sort of get on the record here some of the very positive things
17 you told me, especially about bilingual education.

18 My concern is, with over 2 million people in
19 California that are functionally illiterate, and of the 800,000
20 new immigrants to California each year, 60 percent cannot speak
21 English or write English. I really think we have a tremendous
22 problem in our state with people unable to find jobs, and
23 language is -- I mean, English is so important.

24 Unless we have good programs in our schools that can
25 teach people English through the transition of their native
26 language, I think we're just going to continue to be far short.

27 I was impressed with your position. I'd just like to
28 have you repeat your philosophy about bilingual education and

1 what programs you would be supportive of.
2

3 MS. DRONENBURG: Well, my belief about bilingual
4 education is two-fold.

5 First of all, I believe that we need to educate
6 children. That's the main job of education. And if the way to
7 do that to begin with is to teach them in their native language,
8 then we need to do that so they don't lose the chance to learn
9 other things, like math and science, that they may only
10 understand at those levels.

11 And secondly, absolutely, they need to learn English.
12 And I believe that there are a variety of programs that will
13 enable that to occur. I think that is occurring in many schools
14 right now.

15 I do think that needs to be strengthened, and I also
16 think that we are definitely in need of more bilingual teachers.
17 You cannot do that former that I was mentioning unless you have
18 teachers who are already fluent in that language, and that
19 includes a great many different kinds of languages, which means
20 we're really going to have to recruit teachers from the broad
21 section of our state to teach the broad section of students that
22 we will have.

23 SENATOR MELLO: One of my bills that I had this year
24 was to try to recruit a bilingual teacher from within our own
25 society who'll have the natural ability to speak in different
26 languages, instead of recruiting in Spain and Latin America, and
27 places around the world.

28 We are spending right now \$130 million a year of

1
2 state and federal funds, mostly \$100 million of state funds, for
3 bilingual education, which goes on to the school districts. But
4 we have nothing in the statute to provide ways in which this
5 money is to be spent, or even any guidelines, other than what
6 comes from the Department of Education, which does not have the
7 force of law. They're merely regulations from within a
8 department.

9 The administration has been reluctant -- we allowed
10 the sunseting of the former Bilingual Education Act, which was
11 controversial, but I think we need something to show
12 accountability, for one thing.

13 Also, there's a variation right now of the number of
14 classes that are provided for each state, the number of hours
15 per class, or the number of minutes per class, number of
16 students, the class size. It ranges -- where before there were
17 10 students per class, now it's up to 30 or so, and one class a
18 day versus five.

19 What are your feelings about having something in
20 statute that would lead to this accountability, and a more
21 uniform way of certification of teachers, and also to show how
22 the money's to be spent for this expenditure of funds?

23 MS. DRONENBURG: Well, I do think that you're right,
24 that when you have teachers who care and are involved, that's
25 where the action really is going to occur as far as students
26 really getting the education they need.

27 But there is a system of accountability through one
28 specific method that I'm aware of, and that is the Coordinated

1
2 Compliance Review that the State Department of Education will go
3 into school districts, and it provides a way of assuring that
4 dollars are being spent to educate students for a particular
5 program. In this case, what you would be describing would be
6 the bilingual education program.

7 In order for there to be the force of law for the
8 Department of Education to really go in and do that, that would
9 have to be in statute. So, the strength of those programs --
10 you can believe in local control, and I do. I think people who
11 are close to the program can see what needs to be done. But if
12 you want to have the accountability of dollars, then you need to
13 have the rules and regulations in law so that the people who are
14 enforcing those programs can follow through on them.

15 SENATOR MELLO: Okay.

16 Well, I hope you continue to push within the state.
17 We've had a very divided Board in the past, and sometimes very
18 controversial, about their attitude towards educating our young
19 people.

20 I agree with what you just said, and I hope you'll be
21 a leader in bringing that about in coming years.

22 MS. DRONENBURG: Thank you.

23 CHAIRMAN ROBERTI: Thank you very much.

24 Any opposition in the audience?

25 Do I hear a motion?

26 SENATOR CRAVEN: Move Ms. Dronenburg's nomination to
27 the Floor.

28 CHAIRMAN ROBERTI: Senator Craven moves Kathryn

1 Dronenburg, Member of the State Board of Education.

2 Any discussion or debate? Any opposition?

3 Secretary will call the roll.

4 SECRETARY WEBB: Senator Beverly. Senator Mello.

5 SENATOR MELLO: Aye.

6 SECRETARY WEBB: Senator Petris.

7 SENATOR PETRIS: Aye.

8 SECRETARY WEBB: Senator Craven.

9 SENATOR CRAVEN: Aye.

10 SECRETARY WEBB: Senator Roberti.

11 CHAIRMAN ROBERTI: Aye.

12 We'll leave the roll open on Senator Mello's motion
13 so Senator Beverly can record, but you have sufficient votes.
14 Congratulations to you.

15 MS. DRONENBURG: Thank you.

16 CHAIRMAN ROBERTI: We are going to recess for five
17 minutes, then we'll take up Mr. Janigian, Chair of the
18 Agricultural Labor Relations Board.

19 [Thereupon a brief recess was taken.]

20 CHAIRMAN ROBERTI: I was trying to wait for five
21 Members, but we only have three.

22 The next appointment is Bruce Janigian, Chair of the
23 Agricultural Labor Relations Board.

24 We'll ask you what we ask all the Governor's
25 Appointees, and that is why you feel you're qualified to assume
26 or maintain this position.

27 MR. JANIGIAN: Thank you.

1 First of all, I'd like to thank Chairman Roberti and
2 the Members of the Senate Rules Committee for inviting me to
3 appear before you today.
4

5 I consider that public service is a high privilege,
6 and I'm committed to serving to the best of my ability and to
7 serving all the people to the best of my ability.

8 There are a great many challenges at the ALRB, and I
9 feel I'm qualified to help meet them, and that I'm providing the
10 leadership necessary to meet them. Together with our other
11 Board members and staff, and together with the General Counsel,
12 the Board is today working vigorously to implement the law and
13 to advance this state's policy of encouraging and protecting the
14 rights of agricultural employees to freely choose and enjoy the
15 rights of collective bargaining.

16 My qualifications to Chair the Board stem from my
17 background and the approach I'm taking to the job. I previously
18 mailed each of you a comprehensive statement of my background
19 and a statement of the approach that I'm taking, and it's not my
20 intention to repeat all that material to you here at this time.

21 I will say that I've been an attorney in public
22 service for 15 years, and in that time I've defended people,
23 I've fed people, and I've taught people how to improve their
24 lives.

25 I will say, with regard to my background, that I have
26 found invaluable my experience as an Appellate Court
27 Commissioner and my experience as the Chief Legal Counsel for
28 the California Employment Development Department.

1
2 I think it's important to note that my background in
3 labor and farmworker issues arose from my work at EDD and from
4 some work overseas, and not from having been an advocate
5 representing either management or labor.

6 In other words, I come to this area of law as a
7 neutral, with the judicial orientation, without preconceived
8 positions, with an open mind, and with a keen interest to learn
9 and to improve the administration of justice under the
10 Agricultural Labor Relations Act. I believe this has been a key
11 factor in establishing my credibility with workers, unions and
12 employers. And I believe that the credibility of the Board as a
13 fair and impartial tribunal is the key to our moving ahead.

14 With credibility, the parties will come to our
15 regional offices for guidance and avoid unfair labor practices.
16 With credibility, our first level decision makers, our regional
17 directors, will be respected for their fairness and will not
18 trigger costly rounds of appeals because of perceived prejudice.
19 Lengthy rounds of appeal delay and sometimes nullify the
20 remedial intent of the law.

21 As I stated in my letter to each of you, together
22 with the General Counsel and regional directors, I have
23 personally met with workers and with representatives of every
24 union and major organization involved in California agriculture
25 to carry the message of fairness and impartiality, and to learn
26 their concerns.

27 In response to these concerns, most of which are
28 shared between the unions and the growers, we have expedited and

1 modified case handling, and are continuing to work vigorously to
2 further refine and modify procedures to assure greater fairness
3 and efficiency. We are working to increase public outreach at
4 all levels.

5
6 Since taking office, I'm already seeing many signs
7 that this approach is working. There are new elections taking
8 place. In the past, those elections have been to de-certify
9 unions; today, these elections are to certify unions.

10 There was an election held recently by an entirely
11 new union, and I met with the leader of this union personally,
12 along with the General Counsel, along with the regional
13 director, and gave this individual the information necessary for
14 him to go ahead and to organize, and to bring collective
15 bargaining to a part of California that previously hadn't had
16 much activity in collective bargaining. This is the Border
17 Workers Union in the San Diego area.

18 For the first time, the General Counsel and the Board
19 have acted unanimously to reinstate 19 UFW organizers who were
20 fired in connection with labor activities through injunctive
21 proceedings in California.

22 I believe the state of affairs at the Board today is
23 one of higher productivity and greater impartiality than the
24 past, and reflects a commitment to continue to improve the
25 performance of the Board.

26 I look forward to helping make the ALRB the showcase
27 for sound and equitable administration of agricultural labor
28 relations that it was always intended to be.

1
2 Again, I wish to express my thanks for the
3 opportunity to be here today, and I look forward to any
4 questions that you or members of the public may have to ask me.

5 Thank you.

6 CHAIRMAN ROBERTI: Thank you, Mr. Janigian.

7 I guess one problem is that, and it's not
8 specifically your problem, but it's the politicization of --

9 MR. JANIGIAN: Exactly.

10 CHAIRMAN ROBERTI: -- the Board over the years.

11 The disagreement I've had with Governor Deukmejian,
12 maybe the same point can be made about his predecessor, but
13 whatever, in the last seven years, the Board has been rendered
14 almost immobile because it has been viewed as an advocacy Board.

15 That is a concern I have about giving the Governor
16 any more appointment power in this area.

17 MR. JANIGIAN: If I could respond, I was very pleased
18 with the coverage of the Los Angeles Times over the announcement
19 of my appointment. It said "Law Professor Chosen to Head ALRB".
20 It said: in the past, this Board has been pulled one way and
21 pulled another way. The implication was clearly that the
22 Governor has appointed someone who could help to bind the Board
23 together and make it a neutral place, where it really should be.

24 I couldn't agree with you more, Senator, that the
25 past for the ALRB has been problematical. It has been far too
26 politicized. And the interest of the public across the board is
27 to de-politicize the activities of the Board, to put it on a
28 judicial framework.

1
2 And I believe, with my background, I have sufficient
3 credibility with both sides -- with the unions and workers, and
4 with the growers -- to gain a sufficient respect to go ahead
5 with the kinds of changes that we're making at the Board to
6 expedite our decision making, to facilitate a far greater array
7 of rights and opportunities for the farmworkers than they've
8 known in the past, simply because of the delays brought on
9 because of the politicization and the lengthy rounds of appeals
10 up through the courts that have resulted.

11 Because there has been no credibility, or very
12 limited credibility, the Board has been handcuffed in its
13 decision making ability.

14 This really is an opportunity for us to move forward
15 and really make a change and make an improvement. And that's
16 been the attitude that we have taken since the day I arrived,
17 and I think we've made some real strides in that direction, sir.

18 CHAIRMAN ROBERTI: Thank you, Mr. Janigian.

19 Is there anyone in support of Mr. Janigian's
20 confirmation? Senator Ellis.

21 SENATOR ELLIS: Mr. Chairman, Members, Mr. Janigian
22 came to the Board in February. I'd never met him before.

23 Shortly after arriving, he had been designated the
24 Chairman. And since that time, I have gained the greatest
25 respect of this man of any person I've ever known. He is
26 outstanding as a leader.

27 We have reduced our caseload file significantly since
28 he's been there. Sometimes we didn't like it too well because

1 he gets on the other members. We've been engaged in reviewing
2 our regulations, something that was badly needed over the years.
3 They hadn't been revised in over seven years. He immediately
4 called for hearings, set about establishing the procedure for
5 doing this. We're in the process now of redoing our
6 regulations, which we have to do.
7

8 As far as being fair and unbiased, I have detected no
9 sense of any bias in this man at all. And in the decisions he
10 has written, and the decisions that we've engaged in, in our
11 conversations -- and we meet almost daily on a one-to-one basis,
12 and we meet two or three times a week as a Board to discuss
13 cases -- I've never detected any instance or any indication that
14 he has any bias one way or the other. He seems to be perfectly
15 neutral.

16 I might also add, I think the Board as a whole right
17 now is very, very neutral, and I think our decisions are coming
18 out very fair. And I don't think we can be accused of any -- by
19 anybody.

20 As you know, of course, we've always been
21 controversial. And somebody wins and somebody loses on every
22 case. Obviously, the loser is going to be unhappy.

23 But in my experience in the year and a half that I've
24 been there, and in the few months Mr. Janigian's been there, I
25 can assure you, we've been as fair and impartial as it's
26 possible to be.

27 It would be a tragedy, I think, for you not to
28 confirm this man as the Chairman and Member of the ALRB.

1 CHAIRMAN ROBERTI: Thank you, Senator.

2 Is there anyone in opposition? Ms. Huerta, with the
3 UFW.
4

5 MS. HUERTA: Mr. Chairman, Members of the Committee,
6 my name is Dolores Huerta. I'm First Vice President of the
7 United Farm Workers. I'm currently the person in charge of the
8 collective bargaining for the Union, supervising elections,
9 negotiations, and I also have to supervise the work that's being
10 done with the Agricultural Labor Relations Act.

11 I just want to say to all of you that what's been
12 happening in the fields is pretty bad. The devastation of this
13 current administration, the current gubernatorial
14 administration, of the Agricultural Labor Relations Law has
15 resulted in a situation for farmworkers that pretty much equals
16 that that existed when John Steinbeck wrote The Grapes of Wrath.

17 We have farmworkers now that are earning less than
18 minimum wage in many instances, that are living in very decrepit
19 type of housing. We have a very large surplus of workers and
20 very little justice that is being meted out to farmworkers.

21 I wish I could hope that Mr. Janigian's appointment
22 would make that better, but from what we can see right now, of
23 the time that he's been in office, it looks like business as
24 usual. I want to just give you a couple of examples.

25 Mr. Janigian claimed that he had met with the new
26 union that was being formed along the Mexican border to give
27 them examples of what they could do to organize farmworkers and
28

1 to assure them -- pledge his cooperation.

2 I would like to say, and as an officer of the United
3 Farm Workers, and founder of the United Farm Workers, along with
4 Cesar Chavez, that we would like to have cooperation in terms of
5 the organization that we've been trying to do for the last
6 25-plus years.

7 We had elections that have covered close to 2,000
8 workers. We're still waiting in some instances -- more than
9 2,000; it's more like 3500 workers -- for those ballots to be
10 counted. Just for the ballots to be counted.

11 We had elections in the San Joaquin Valley in the
12 tomatoes last year, in August at three companies: Triple E, San
13 Joaquin Farms, and Ace Tomato. These elections covered over a
14 thousand workers. That was in August of 1989.

15 The ballots, the challenge ballots to those elections
16 have not yet been counted.

17 The tomato harvest is about ready to begin again.
18 There was a big strike there. We were trying to prevent
19 violence. We got the people to go back to work, saying to them:
20 "We'll have an election. You go back to work. We're going to
21 keep this an unviolent situation."

22 They did go back to work. They listened to what the
23 Union implored them to do, and we still do not have the ballots
24 counted.

25 We had another election in the strawberries in Santa
26 Maria, covering 500 strawberry workers at a company called
27 Furokawa. That was in May of 1989. We have not -- those

1 ballots were counted, but we haven't been certified yet. The
2 strawberry season in Santa Maria is just about over for this
3 year, a year later. Those workers have not been certified.
4 They voted, but they don't know for what.
5

6 We had another election, and I want to talk about
7 this one, in a grape farm in Fresno County, at the Gerawan Ranch
8 in May, last month. In this instance here, the employer moved
9 very rapidly against the workers who were organizing. In one
10 labor camp, they shut the kitchen of the camp; they took the
11 workers' mattresses, their dirty, filthy mattresses, away from
12 them so they couldn't even sleep on those. They shut the gas
13 off so they couldn't have any hot water to shower in, and then
14 they refused to take them out to work.

15 We went to the ALRB trying to get an injunction to
16 force this company to put the workers back to work, because this
17 was obviously to have an effect on the election. We were turned
18 down, that request to get that injunction. There were about 30
19 -- about 54 workers that were involved in that camp.

20 Subsequently, we had a run-off election because there
21 had been another union involved, which was not included in the
22 run-off. The employer laid off 40 crews, almost half of the
23 electorate. Again, we tried to get the Board to get an
24 injunction, make the employer put those people back to work,
25 because the workers who had voted for the -- who they thought
26 had voted for the union in the previous election, they laid them
27 off at the same time they were hiring new people. Again, we got
28 no response from the Board.

1
2 We do not think that we're going to be getting any
3 justice under this new appointment. The Board, part of the
4 testimony was that the Board has initiated expeditious
5 procedures; expedited procedures to try to settle some of the
6 cases.

7 These expedited procedures are proving to be very
8 costly for our farmworkers. The Board adopted what they call a
9 fast track method to settle these compliance cases that have
10 been sitting there for many years. Basically what this means is
11 that they go to the employer on these cases where they owe
12 workers hundreds of thousands of dollars, in some cases a
13 million or so dollars, and they'll say -- ask the employer what
14 he thinks he can pay. The employer tells him. They make a
15 unilateral agreement, and that's what the workers get.

16 In some instances, the workers are getting less than
17 1 percent of what they should have gotten. In many cases, these
18 are specifications that the Board themselves issued.

19 I was recently involved with one of these cases
20 where, in a company called Vessey, which is down in Senator
21 Craven's district. This company owed these workers \$600,000.
22 This was the specification that the Board itself issued.

23 And the Board made a unilateral settlement for
24 \$263,000, which is about a third of what the workers should have
25 gotten.

26 So, these expedited procedures that the Board has
27 adopted are costing the workers millions and millions of dollars
28 that are due them for -- these are remedies that were due to the

1
2 workers for violations of the law that the employers were found
3 guilty of violating the law. And many of these cases went up to
4 the courts and came back down. These cases have been around for
5 10 years.

6 So, we don't see that there's any change. Just
7 recently, in a hearing of the Agricultural Labor Relations Board
8 that was -- excuse me, it was a hearing to discuss some changes
9 in regulations. Part of the discussion there was, let's change
10 the regulation so that the employers can know who the witnesses
11 are in some of these hearings. And the Chairman was open to
12 this suggestion, that let's let the employer know who the
13 workers are that are making these charges against them before
14 they go to court.

15 You can imagine. As it is now, workers already know
16 that they can be fired, that it'll take ten years to get their
17 cases settled. And when they do get settled, they can expect
18 to get maybe less than one percent of what they were supposed to
19 get in terms of these settlements.

20 So, we need someone as Chairman who knows something
21 about labor law. The National Labor Relations Act says that on
22 these back pay settlements, they should try to settle at least
23 at 80 percent. The Agricultural Labor Relations Board is now
24 settling these cases at -- some at 10, and 20 and 30 percent of
25 what they're worth.

26 We need somebody who cares about farmworkers, who is
27 ready to carry out the legislative intent of the Agricultural
28 Labor Relations Law, was to encourage farmworkers to organize.

1 We have seen a devastation. We have seen all of our organizing
2 efforts literally go down the drain because the employers can
3 violate the laws left and right and get away with it, and know
4 that somewhere down the line, they're going to get off the hook.
5

6 We need help desperately. And I might say, this not
7 only impacts on farmworkers. When they don't have enough money
8 to eat, they don't have enough money to provide shelter --
9 Senator Mello was talking about the new immigrants and their
10 education -- I can assure you, they can hardly educate their
11 children when they don't have any protection out on the job, or
12 they're not able to improve their working conditions and wages.

13 And of course, it also impacts on the small business
14 community in the rural areas which depend upon farmworkers for
15 their commerce.

16 So, this has devastating impact on our whole economy,
17 let alone farmworkers who have to go on welfare because they no
18 longer can earn enough wages to be able to support their
19 families.

20 So, I desperately urge a no vote on this
21 confirmation in hopes that we can get someone appointed to this
22 Board that knows something about labor law and that is willing
23 to fight for farmworkers.

24 CHAIRMAN ROBERTI: Thank you, Ms. Huerta.

25 Is there anyone else in the audience who wishes to
26 testify either in support or opposition?

27 MR. LOPEZ: Mr. Chairman and Members, my name is
28 Dennis Lopez. I'm with the Mexican American Legal Defense and

1 Education Fund.

2 We many times have interactions with farmworkers
3 throughout the state, and from our interactions with those
4 individuals, we get a general feeling that they have lost a lot
5 of faith and confidence in this agency as a means in which to
6 get some fair-handed and equal justice with respect to their
7 needs as farmworkers.
8

9 We feel it's very important that those who would be
10 confirmed and be on this Board would be strong in their
11 protections of the rights of farmworkers.

12 Also, we're concerned with the affirmative action
13 record of the agency. Specifically, we're concerned with the
14 low numbers of Chicano-Latinos that have been hired as attorneys
15 in recent years, and also with the limited extent of upward
16 mobility.

17 For those reasons, we're opposed.

18 CHAIRMAN ROBERTI: Thank you very much, Mr. Lopez.
19 Mr. Henning.

20 MR. HENNING: Mr. Chairman, Members of the
21 Committee, Jack Henning, California Labor Federation.

22 When the law was enacted in 1975, the purpose was to
23 establish some equity between the workers and the employers.
24 There had been absolutely none historically in agricultural
25 developments of California over long years.

26 So, the corrective work began. The people appointed
27 to the Board upon its initiation understood that it was their
28 task to restore justice and to take the deprived element and

1 give them something of the system.

2 The growers weren't in any economic difficulty. They
3 were not living by river banks and under bridges. They were not
4 unemployed. Their families were not doomed by the system.

5 And so, understandably, the Board acted strongly to
6 bring some justice to the system.

7 When the change in the administration came, then the
8 Board took on a new character. We understand the realities of
9 political life, but we're more concerned with the substance of
10 the matter.

11 The Board then became the advocate of those of wealth
12 and of those of power in the agricultural system. And the
13 workers have suffered.

14 So, we want a change. We want the Board membership
15 to be restored to the character that identified it when the law
16 was passed.

17 So, we are in opposition.

18 CHAIRMAN ROBERTI: Thank you, Mr. Henning.

19 Anyone else?

20 Mr. Janigian, do you choose to rebut?

21 MR. JANIGIAN: Thank you, sir.

22 First of all, if I may say this, it is an extreme
23 honor for me to be here, and a real honor to be sitting next to
24 the individuals who have just testified. Even though they've
25 been testifying in opposition, I'm in total sympathy with their
26 comments, and I tremendously respect their integrity and the
27 really hard issues that we are facing.

1
2 I can say, with regard to Ms. Huerta's comments
3 first, that I was aware of the lack of communication between the
4 Board and the Union as something that had been festering for
5 some time.

6 The first week I came into my office, I established
7 communication with that organization. I have been meeting
8 repeatedly with members of the UFW, and raising the kinds of
9 concerns that Ms. Huerta raised today is a very productive
10 thing. It's resulting in a very good analysis of issues, and a
11 lot of corrective and remedial measure being taken by the Board.

12 This was not forthcoming previously. It's a major
13 change right now simply to have her input. In fact, she came by
14 my office with 50 workers. I invited them all up and was very
15 appreciative of the fact that they came, because to me, it was a
16 turning point. They had previously boycotted, in essence, the
17 ALRB and were not giving the ALRB necessary input.

18 I realize some of that was based on economics, but
19 some of it was simply, I think, in despair over the system.

20 This is why I say that credibility is essential.
21 We're bringing the unions back into the process, because without
22 them, of course, the process isn't working. The process is
23 about collective bargaining. These are our public. It's
24 essential that they are part of this dialogue, and I very much
25 appreciate the comments.

26 On many of the specifics that were mentioned, in fact
27 all of the specifics that were mentioned, I'd like to just
28 comment on briefly.

1
2 First of all, we are moving faster with election
3 processing than ever before at the Board. We had a Gerawan
4 election back at the end of May. We are about to have the
5 completed resolution of that issue this week. That is going
6 faster than ever has happened previously.

7 With regard to these other cases that she mentioned
8 -- Triple E, et cetera -- the reason for Ms. Huerta's visit with
9 members of the UFW concerned that case, and that case has been
10 resolved, and the issued, and we had a petition for
11 reconsideration which had come in and we were dealing with it.
12 There were a large number of issues involved, but even with
13 those large numbers of issues, the record, the time frame in
14 which they were resolved was much faster than previous, and I'm
15 not saying that's good enough. We're going to get much better.

16 I think the time frame on elections, the intent of
17 the law on elections, is to move these things rapidly, and get
18 the union either certified or get the election tossed out if
19 it's not a good election, to get a quick resolution.

20 I'm completely -- I completely abhor the idea of long
21 processing and delays in administrative organizations and the
22 Board, and that's not going to happen.

23 With regard to this fast track methodology, that
24 certainly isn't the methodology that I'm a proponent of. In
25 fact, working with the General Counsel, we threw out that fast
26 track methodology early on, and I'm very proud of us having
27 thrown it out.

28 We're also going back and looking at issues that have

1
2 arisen under it where possible. This is a very, I think,
3 positive sign that this Board is moving ahead in ways that will
4 enhance the fairness of the processes at the ALRB, and I salute
5 the General Counsel's initiative in withdrawing it with the
6 concurrence and support of the Board.

7 The kinds of speedups that I'm initiating are simply
8 speedups, meaning, I've established case management standards
9 which the Board members are working very hard and diligently to
10 meet, and they are performing, I think, great service to
11 everyone in their work.

12 There was a comment made about a worker witness rule.
13 I was opposed to the worker witness rule. I voted against --
14 pardon me.

15 I was opposed to any change to it. There is a record
16 of that hearing if anyone is interested in seeing it. It came
17 up in the course of discussion, just as many issues come up
18 before you in the course of discussion, and it was treated
19 accordingly.

20 The worker witness rule, in essence, protects the
21 confidentiality of a worker providing information with regard to
22 an unfair labor practice.

23 CHAIRMAN ROBERTI: So you did not vote to change
24 that?

25 MR. JANIGIAN: Did not vote to change it, yes, sir.
26 And in fact, voted to retain it. And we will have an
27 opportunity to further review that through our regulatory
28 process.

1
2 I might add that there was no one from the UFW
3 present in that room, and that if someone had been present to
4 observe the proceedings, that any misunderstandings wouldn't
5 have arisen.

6 With that, I would just like to say again that
7 Ms. Huerta, Mr. Lopez, and Mr. Henning are all committed to the
8 rights, preserving the rights of the farmworkers in the state,
9 and the Board is committed to preserving the same rights. And
10 with the cooperative relationship, with mutual respect, we will
11 move on vigorously to make this law really a showcase.

12 Again, I appreciate the opportunity to be here.

13 CHAIRMAN ROBERTI: Thank you, Mr. Janigian.

14 Senator Petris.

15 SENATOR PETRIS: I meant to ask Ms. Huerta some of
16 the dates.

17 I've met with you a couple of times.

18 CHAIRMAN ROBERTI: Do you want to come forward,
19 Ms. Huerta.

20 SENATOR PETRIS: I've been very impressed, and I
21 asked you what your plans are, and what some of the innovative
22 things you're doing.

23 They seemed to me to be positive, and certainly a
24 major departure from the prior administrations.

25 The overall history, the conditions out there for the
26 farmworkers, nobody's that been in this state and looked around
27 a little bit can deny it's just absolutely the way that
28 Ms. Huerta describes it. They've been dismal.

1
2 And the whole purpose of this Act is to try to bring
3 about some justice to a place that never had it before.

4 So, we don't need a Board that's neutral. It's not a
5 court.

6 That Board is an advocate for the employee. The
7 statute says so. So, it calls for a different attitude than if
8 it had been an administrative law proceeding, a judge, or
9 superior court in a court of law.

10 Now, I'm kind of devastated by what Ms. Huerta said.
11 If the time frame goes way back, then that's just part of the
12 old approach. They're still doing it, and that doesn't surprise
13 me.

14 I think I told you at our meeting that I had kind of
15 given up on the Board in desperation because they point to the
16 fact that the filings have dropped. Well, the filings dropped
17 because the workers figured it doesn't do any good to file. You
18 know, that was one of my arguments to you at that time.

19 I'd like to know from Ms. Huerta about these cases
20 that were settled out at such a low percentage of the amount in
21 dispute after a finding by the Board. That's a typical pattern
22 that went way back, too. I used to clash with Mr. Stirling on
23 that time and again.

24 It's a sellout of the worker. There's just
25 absolutely no excuse for that, except that the people who vote
26 to approve it, and I guess the lawyer has authority to do it on
27 his own. He doesn't even have to bring it before the Board, as
28 I remember.

1
2 I think the Counsel has the right, under the statute,
3 to settle it out without even conferring with the Board.

4 I don't know if that's true. Is that true?

5 MR. JANIGIAN: No, sir.

6 Settlements, it depends on the stage in which
7 settlements are entered.

8 SENATOR PETRIS: Well, the ones that she described.

9 MR. JANIGIAN: With regard to the compliance area,
10 settlements have to come before the Board, sir.

11 SENATOR PETRIS: Well, then the Board, it seems to
12 me, is culpable.

13 MR. JANIGIAN: We've made changes. I'd love to
14 address that.

15 SENATOR PETRIS: Yes, I'd like to hear it,
16 specifically with respect to the cases.

17 The two or three cases you mentioned that were
18 settled out for such a small number are not any different from
19 cases we've been hearing about for years.

20 My question is, how far back did that happen? Did
21 any of those happen this year?

22 MS. HUERTA: One of them happened last Friday.

23 SENATOR PETRIS: Can you tell us which one?

24 MS. HUERTA: This is the -- when I was referring to
25 the Vessey Corporation case, which the specifications of the
26 Board were \$630,000, and the Board --

27 SENATOR PETRIS: Now, does that mean that the Board
28 made a finding that the company owed \$630,000 to the employees?

1
2 MS. HUERTA: Right, that was the initial
3 specification from the Board was for \$630,000 and --

4 SENATOR PETRIS: That was settled for how much?

5 MS. HUERTA: Two hundred and sixty-three thousand.
6 It was a unilateral settlement between the Board and the
7 company.

8 And I was advised of this by the company. In fact,
9 the company told me two or three weeks before -- the company
10 told me three weeks before it was signed that they already had
11 an agreement with the Board, and repeated to us again. I mean,
12 they know more of what's going on, of course, than the workers
13 do or the worker representatives do.

14 This is why I say that we initially had not intended
15 to oppose the confirmation, but we've seen just in the last
16 couple of months, and go back to the Gerawan election which he
17 referred to, which was the election that I also referred, which
18 again, the ballots have not been counted at that election, where
19 again we went to the Board to try get them to move and get the
20 company to stop discriminating against these workers right in
21 the middle of an election procedure, and the Board would not
22 move on it.

23 So, these are things that have happened just
24 recently. They haven't happened in the past.

25 SENATOR PETRIS: On that last case, prior to the
26 certification of \$600,000, what was the amount of the claim
27 originally requested?

28 MS. HUERTA: Well, it was -- the way that they

1 usually determine those is, these are people that were -- the
2 company refused to rehire them, and this was back, like, in
3 1980, I believe, or '81, way back then. And all these years,
4 the company refused to hire them, and they kept fighting the
5 case. It went up through the courts; it came back down again.

6 And the Board's specifications were that the company
7 owed the workers \$630,000.

8 SENATOR PETRIS: Is that the amount originally
9 claimed, or is that --

10 MS. HUERTA: Well, it goes by the payroll, how much
11 the workers would have earned had they been working. And if the
12 workers have interim earnings, then those are deducted.

13 But that was the Board's figure. That was their
14 specification. And then they go ahead and settle for less than
15 their own specification.

16 And this is common.

17 SENATOR PETRIS: Without conferring with the Union.

18 MS. HUERTA: Well, they confer with the Union, but, I
19 men, we object, but they do it anyway. You know, it's almost
20 like, you know, with the unilateral settlement, so what?
21 There's nothing we can do. They do it anyway.

22 SENATOR PETRIS: Was there any conferring with the
23 Union on that case?

24 MS. HUERTA: Yeah, they conferred with the Union.

25 SENATOR PETRIS: What justification did they give for
26 the small figure?

27 MS. HUERTA: Well, we haven't gotten any. Most
28

1 cases, we don't get any. They just do it.

2 This has happened time, after time, after time. It's
3 a pattern that's been going on now for a long time.

4 SENATOR PETRIS: What about the other two examples?
5 How far back do they go?

6 MS. HUERTA: Well, the other example, I think, goes
7 back just a few months also, Rivcom. That's another example
8 that I gave, and that, I think, goes back to the first part of
9 the year, this year, of '90.

10 SENATOR PETRIS: Do you remember the numbers on that
11 one?

12 MS. HUERTA: I don't have the total figures, but I
13 have part of the case with me here. But in this case, the
14 workers were getting even less money. I think like about 1
15 percent of what was due them.

16 SENATOR PETRIS: In January of this year?

17 MS. HUERTA: Yeah.

18 It's -- I mean, we haven't seen any change. They
19 have moved the cases, but they're moving the cases again, and
20 the workers are still being given just a percentage of what is
21 due them.

22 We don't see that there's any real due process there,
23 and no fighting for the workers to say to the companies: "This
24 is what you owe the workers, and this is what it's got to be."

25 In every single -- almost every single instance,
26 we're -- our attorneys are in there, or our legal
27 representatives are in there fighting against the Board and the
28

1 company. It's like two against one.

2
3 SENATOR PETRIS: Can you comment on those last two
4 cases?

5 MR. JANIGIAN: Yes, sir.

6 There is a -- the Vessey case has never come before
7 the Board. I'm not familiar with the case.

8 The General Counsel, I understand, has some knowledge
9 of this case, but it has not come before the Board.

10 SENATOR PETRIS: Does it have to come before the
11 Board for ratification?

12 MR. JANIGIAN: Yes, it would.

13 Any settlement for compliance matter would come
14 before the Board.

15 Since I have been at the Board, every case that has
16 settled, that the Board has approved a settlement on, has had
17 the active participation and cooperation of the Union before the
18 Board has accepted a settlement.

19 The Board is loathe to accept unilateral settlements.

20 The General Counsel does not have discretion to
21 simply go off and settle cases at that stage.

22 General Counsel can deal with charges between the
23 Charge and Complaint stage before they go to a hearing, and
24 settle those. He has discretion. That's in the law. But he
25 does not have the authority to settle past that stage before
26 coming before the Board.

27 These matters have not come before the Board.
28 Therefore, I would say that this Vessey matter is speculation.

1
2 It hasn't -- it can't be a formal settlement. I think it
3 probably is still in the discussion stages, and that's why it
4 hasn't come to us for review.

5 This other issue with regard to any requests for
6 injunction with Gerawan, et cetera, injunctive relief matters
7 are brought to the attention -- where they're found meritorious,
8 they're brought to the attention of the Board, and the Board,
9 again, will instruct the General Counsel with regard to
10 injunctive relief.

11 That matter did not come to the Board.

12 I personally have not had any knowledge of Vessey or
13 any injunctive requests for Gerawan.

14 SENATOR PETRIS: Why wouldn't it be before the Board?
15 Is somebody intercepting it?

16 MR. JANIGIAN: No, sir.

17 The way we're divided, we have a General Counsel, we
18 have a regional director, and we have the Board. The Board
19 functions in essence as the appellate tribunal reviewing
20 administrative law judge decisions as a lower panel, and also
21 reviews certain specific efforts of the General Counsel to
22 settle cases, for example, or to go in for injunctive relief.

23 SENATOR PETRIS: Let's take this case of cutting off
24 the lights and the power.

25 First of all, that's a violation of State law. I
26 happened to have carried that bill that prohibits a landlord
27 from cutting off the water or electricity, et cetera, because of
28 a dispute; no matter what the nature of the dispute is.

1
2 In these cases, labor camps, I assume the landlord is
3 the one who did it. I don't know whether it would be the grower
4 or not, because the growers have been moving out of that.

5 How about walking me through the process. Now, this
6 thing happens to the workers. The mattresses are taken away,
7 the power's cut off. It's during a dispute. It looks to me
8 like a retaliation.

9 Where does the worker go now? Does he run to the
10 regional director in that area and file a complaint and ask for
11 an injunction? Is he empowered to give an injunction?

12 MR. JANIGIAN: The regional director would be
13 empowered to request the General Counsel to seek injunctive
14 relief, yes, sir.

15 SENATOR PETRIS: So, it wouldn't even come before the
16 Board.

17 MR. JANIGIAN: It wouldn't come before the Board.

18 Well, I take it back, sir.

19 If the regional director determines that there is a
20 chance of getting injunctive relief, he'd come before the Board
21 to ask for it. The Board, in other words, has to approve the
22 regional director's seeking injunctive relief in the courts.

23 SENATOR PETRIS: But if he decides against it?

24 MR. JANIGIAN: If he decides against it, it doesn't
25 come before the Board.

26 SENATOR PETRIS: Does that mean that those decisions
27 were made by the regional office?

28 MS. HUERTA: What we were told, we -- they said --

1 they went out there. They talked to the workers. The regional
2 office interviewed the workers. They saw the situation, and
3 they saw also that the kitchen had been closed. The workers had
4 nowhere to eat.

5
6 Then we were told that they were going to ask the
7 Board for an injunction. Then we were told that the Board had
8 denied the injunction.

9 And this is -- at our end, this is what we're being
10 told.

11 SENATOR PETRIS: Somebody's misleading the workers.

12 MS. HUERTA: Well, somebody -- these are their own
13 Board agents that are telling us that the Board up here refused
14 to give the injunction.

15 So, we had to collect money and food for these
16 workers to try to keep them, you know, keep them so -- there
17 during the course of the election so we wouldn't lose them.

18 But we were told that the Board refused to go for an
19 injunction. I mean, we were calling, like, four or five times a
20 day, saying, you know, we need an injunction, you know, to get
21 them to open up the camp.

22 MR. JANIGIAN: To respond, with regard to phone
23 calls, the General Counsel and I, and the regional directors,
24 have met. In fact, we were just down in Visalia a few weeks
25 ago, meeting with the UFW attorneys, telling them that our door
26 is open, all of our doors are open. Any time there's an issue
27 of this sort, to communicate with us directly so that this kind
28 of misunderstanding doesn't crop up. This is what we want to

1 avoid.

2
3 SENATOR PETRIS: Apparently, they don't know where
4 the door is, if you're talking about regional directors.

5 MR. JANIGIAN: The regional director, sir, in our
6 Visalia office grew up in a migrant farmworker camp; is as
7 attuned to migrant farmworkers issues, to farmworker issues, as
8 anyone in the state. We have tremendous confidence --

9 SENATOR PETRIS: Why wouldn't he issue an injunction
10 under those primitive, 15th Century conditions?

11 MR. JANIGIAN: I --

12 SENATOR PETRIS: I just find this so abhorrent, you
13 know, I can't understand it.

14 MR. JANIGIAN: One of the things that we have to take
15 into account with regard to this specific issue that we're
16 discussing is, this doesn't sound to me as if it falls within
17 the ALRB's jurisdiction. Meaning, labor conditions per se. Not
18 something that the Board gets involved with directly.

19 The General Counsel would have to make a call on that
20 with regard to the scope of the ALRA. In essence, it sounds to
21 me, just hearing the -- this is the first time I've heard of
22 this -- but it sounds to me as if this is a matter for, perhaps,
23 an injunctive relief issuing, but not necessarily from the
24 Board.

25 I'm not sure exactly what the Board's jurisdiction in
26 that would be. It sounds like the Labor Commissioner. It
27 sounds like an issue of sanitation regulations, but those aren't
28 things --

1 SENATOR PETRIS: See, to me, that reflects the George
2 Deukmejian philosophy.

3 MS. HUERTA: This happens --

4 SENATOR PETRIS: His philosophy based upon his
5 conduct and policies. He seems not just to have a lack of
6 empathy with the blue-collar person out there. I think he hates
7 him.

8 He's destroyed the Farmworkers Union. He destroyed
9 OSHA. He has turned his back and failed to enforce all kinds of
10 laws relating to protection of the working people of the state.

11 So, when he appoints people, they have to reflect his
12 philosophy.

13 Now, if I were the General Counsel, I'd have jumped
14 all over that employer or landlord who did that. I don't care
15 whether it's part of the statute or not. I'd have called them
16 up and said, "What in the world are you doing here? You're in
17 the middle of a dispute, and you're hauling their bedding away.
18 What are you doing that for?"

19 I'm not going to go run, looking for a statute that
20 might impinge on the jurisdiction of the Labor Commissioner, who
21 might be in the next county or here in Sacramento.

22 So, it's more than a statute that's involved here.
23 It's an attitude.

24 MR. JANIGIAN: That's right.

25 SENATOR PETRIS: Now, what I like about you in our
26 discussions, I thought you had a totally different attitude.

27 I honestly don't believe, if you were the regional
28

1
2 guy down there, that you'd have permitted that to happen. I
3 think you'd have found some way to jump on him.

4 My complaint is that all through this agency, in the
5 so-called new neutral posture, you get this kind of an attitude.

6 You know, what is a worker supposed to do? How is a
7 worker supposed to react?

8 MR. JANIGIAN: I completely agree with you, Senator.
9 In fact, the credibility, this idea of credibility of the
10 regional directors causes an openness between the regional
11 directors and the employers, so that when the regional director
12 simply contacts an employer and says, "Hey, this is not
13 appropriate conduct. Knock this off," they'll respond even
14 short of having to get into any kind of legal wranglings.

15 SENATOR PETRIS: That's my point.

16 MR. JANIGIAN: This is very important. I agree with
17 you.

18 SENATOR PETRIS: In all these disputes we've had over
19 the years since the Deukmejian administration started, I haven't
20 seen that kind of a spirit exemplified anyway. It's just very
21 distressing.

22 MS. HUERTA: I'd just like to say that in the case of
23 this particular labor camp -- and by the way, there were other
24 labor camps where similar things were taking place -- that this
25 was during the course of an election. So, this was totally
26 under the jurisdiction of the Board; totally under the
27 jurisdiction of the Board.

28 This was an election procedure that was happening,

1
2 and these workers were -- all of this was happening to them
3 because they were pro-Union, and signed cards, and were wearing
4 buttons, et cetera. So, it was totally under the jurisdiction
5 of the Board.

6 SENATOR PETRIS: Is that where 42 of them were fired?

7 MS. HUERTA: Yes, 54.

8 SENATOR PETRIS: Fifty-four were fired?

9 MS. HUERTA: Yeah, right.

10 And then, just an additional thing, that under the
11 previous -- under the Brown administration, the Board used to
12 issue over 100 decisions a -- well, you know, about 100
13 decisions every other month.

14 And under this Board now, we've had five decisions
15 this whole year. They've issued five decisions in the course of
16 this year.

17 So it's just -- I don't know what they're doing, but
18 we know one thing: they're not counting ballots. They're not
19 counting ballots of the elections.

20 SENATOR PETRIS: Can you give us more detail on the
21 ballot situation on the certification?

22 MR. JANIGIAN: Yes.

23 We have two -- two procedures. When ballots are
24 cast, to expedite the election process, those ballots that are
25 challenged -- meaning, the eligibility of the person casting the
26 ballot has been challenged -- will still be received, but it
27 won't be opened until a resolution is made by the regional
28 director and a report is made.

1 Once a report --

2 SENATOR PETRIS: How long does that take?

3 MR. JANIGIAN: Days to weeks, depending on the
4 circumstances, the number of challenged ballots.

5 SENATOR PETRIS: She's talking May of last year.

6 MS. HUERTA: Well, in the tomatoes, it was August of
7 last year, of '89.

8 SENATOR PETRIS: August of last year.

9 I mean, how many employees were involved in that
10 election?

11 MS. HUERTA: There were, all totaled, probably about
12 close to a thousand workers. There were three separate
13 elections, but they only -- what they do on the challenged
14 ballots, they only count enough ballots to -- 'til you get the
15 majority.

16 And in two of the companies, we won with the strike
17 breakers. The strike breakers that were went in -- brought in,
18 also voted for the Union. So, they only needed to count enough
19 ballots to get the 50 percent of the total vote count.

20 So, I mean, it wasn't that big of a deal.

21 SENATOR PETRIS: I suppose that's okay. Once you get
22 past 50 percent, you've got a result.

23 But I don't know why it would be so troublesome to
24 count all the ballots in a reasonable time.

25 MR. JANIGIAN: I think there ended up, in one of
26 these cases, that the Board just issued -- there was something
27 on the order of 90 objections that came in from legal counsel.
28

1 Law firms get ahold of these things and they make
2 them very complex.

3 One of the reasons the issue took a number of months,
4 and I think it was at the Board for something on the order of
5 four months, was because there were novel issues of law raised,
6 one of which was whether the eligibility to vote was in question
7 because of violence during -- an alleged violence -- during the
8 -- an election, whether that would nullify that eligibility of
9 the voter, or whether or not that would be an issue that could
10 be taken up during a separate election objection procedure.

11 These cases came up before I arrived at the Board,
12 and I've done nothing but hurry cases along since I've been at
13 the Board. And I've had people working on them around the clock
14 since I've been at the Board.

15 That's about all I can say, sir.

16 MS. HUERTA: Well, there were similar types of
17 elections that were held back when the law first started, and
18 there were hundreds of elections, and the ballots were counted:
19 challenge ballots were counted; strikers' ballots were counted.
20 And it all happened very, very fast.

21 And now we have to wait a year to get a
22 certification, or a year to get the ballots counted. And it's
23 just -- there's just really no justification for it.

24 CHAIRMAN ROBERTI: Is there anyone else who wishes to
25 testify?

26 Let me just reiterate what I said earlier,
27 Mr. Janigian, as far as my own vote is concerned. I think your
28

1 qualifications are terribly impressive.
2

3 My concern is with the heavy politicization, and to
4 the point of a demeaning attitude toward the workers who had to
5 come before the Board due to the appointments, especially the
6 first appointments of Governor Deukmejian.

7 I personally find it difficult in this instance to
8 give the Governor any further appointing power in this one very
9 important agency.

10 So therefore, my own vote is not to be considered
11 reflective of my opinion of your qualifications, your ability,
12 your honesty, but it's reflective, I think, of a terribly
13 demeaning attitude that this administration has had on the
14 workers, and the terrible politicization that has taken place as
15 far as that Board is concerned.

16 A number of people whom I have a great deal of
17 respect for have called on your regard. Dean Schaefer made a
18 point of, while he was ill, having someone call, and I was
19 impressed.

20 Senator Petris.

21 SENATOR PETRIS: Well, I came in prepared to support
22 him because, as I mentioned earlier, I was very much impressed.
23 I hadn't even seen all these qualifications at the time as far
24 as his background, but I thought his plans and his understanding
25 of the statute -- he had done a thorough job studying it -- his
26 response to some of my questions, the things that he wanted to
27 do, I really believed that things were really going to improve,
28 at least as far as the Chairman's role was concerned. He can't

1 do much about changing the others, but I think the Chair does
2 have an influence on other members. He appears to me to be a
3 strong leader type.
4

5 But this information is just, to me, it's kind of
6 devastating. I don't know whether we should put it over and get
7 more information --

8 MR. JANIGIAN: Would it be helpful -- the General
9 Counsel is here with us. The General Counsel has much more
10 direct information than any of the Board members has.

11 He's willing to come forward, provide some
12 information, if that would help elucidate the issue.

13 SENATOR PETRIS: I think that might be helpful.

14 MR. PRESSLEY: Thank you. My name is Don Pressley.
15 I'm the General Counsel of the ALRB.

16 I think that I can maybe shed some light on some of
17 the questions that were asked of Mr. Janigian.

18 The Gerawan situation, it's true, he was not aware of
19 that situation. I was not aware of the scenario that Ms. Huerta
20 indicated existed down there.

21 Had that fact ever come before me, it is true, it is
22 within our jurisdiction, and we would have sought in terms of
23 relief.

24 No question about it, that is blatant -- blatant
25 activity in retaliation against the workers for their concerted
26 activity.

27 So, I am unaware of that, of those facts that she
28 expressed here today.

1 As far as the compliance activity --

2 SENATOR PETRIS: Let me ask you there, excuse the
3 interruption.

4 Was anybody aware of it in the agency?

5 MR. PRESSLEY: The only person that would be aware of
6 it, if what she says is true, would be the regional director.
7 The regional director, his staff goes out and does an
8 investigation. The investigation is completed with the regional
9 director making a recommendation or a determination as to
10 whether or not a prima facie case exists.

11 SENATOR PETRIS: Are there any records on that?
12 Would he file a memo or anything?

13 MR. JANIGIAN: Yes, sir. He would have to dispose of
14 the case in writing.

15 SENATOR PETRIS: Who's the director in that case?

16 MR. PRESSLEY: Lawrence Alderete.

17 SENATOR PETRIS: Can we bring him up here?

18 MR. PRESSLEY: Certainly, sir.

19 SENATOR PETRIS: You know, in all these problems, we
20 often deal with this anonymous mass of bureaucracy. The
21 American taxpayer is very fond of beating up on the bureaucrats,
22 but they're nameless and they're faceless.

23 I want to see a name, and I want to see a face, and I
24 want to confront him. And I want to ask him under what
25 circumstances he could possibly turn his back on this set of
26 facts.

27 Now, I believe Ms. Huerta. I've known her for many
28

1 years. She doesn't need to exaggerate because the conditions
2 are pretty bad anyway. Even if half of what she says is true,
3 he should have done something.
4

5 If it's okay with the Chair --

6 CHAIRMAN ROBERTI: Yes, I think it's important
7 enough.

8 SENATOR PETRIS: And perhaps one or two others
9 relating to some of the other incidents. I think we ought to
10 put that on the table and discuss it, and ask them what in the
11 world they think their mission is.

12 If they can't act on behalf of the worker in that
13 kind of an aggravated situation, what does it take?

14 MR. PRESSLEY: I agree, Senator.

15 MR. JANIGIAN: Now, Mr. Janigian said if he had been
16 there, he'd have done something. Whether it's in the statue or
17 not, he'd have done something.

18 It looks to me like you would have done something.

19 MR. PRESSLEY: Yes, sir.

20 SENATOR PETRIS: So, where does he get off doing this
21 kind of thing, turning his back on that during the height of an
22 election? You know, he can't be so naive as to believe that
23 these incidents are totally unrelated to the election process.

24 MR. PRESSLEY: The timing is certainly suspect.

25 SENATOR PETRIS: Yes.

26 MR. PRESSLEY: To the defense of the regional
27 director -- or actually, not to the regional director, but to
28 Mr. Janigian, it is true that we told all of the unions when we

1 met with them, "Please, if you are aware of situations like
2 this, where you believe that an injustice has occurred, or you
3 think that you're getting a raw deal, please pick up the phone
4 and call me. Make me aware of these situations."

5
6 Because, coming here today is the first that I've
7 heard --

8 SENATOR PETRIS: First time you've heard about it?

9 MR. PRESSLEY: Yes, sir.

10 SENATOR PETRIS: Well, maybe they've given up over
11 the years.

12 CHAIRMAN ROBERTI: I take it that emphasizes
13 Mr. Janigian's testimony that it's the first he heard about it.

14 MR. PRESSLEY: He wouldn't have heard of it had I not
15 brought it to his attention. That's the only way that the Board
16 hears of anything is that the General Counsel has to take it to
17 them.

18 CHAIRMAN ROBERTI: And you brought it to his
19 attention --

20 SENATOR PETRIS: He just learned it.

21 MR. PRESSLEY: I just heard of it just now, Senator.

22 SENATOR PETRIS: Well, can we do that, Mr. Chairman?

23 CHAIRMAN ROBERTI: I think that's very important.

24 My inclinations are still as I articulated them, but
25 nevertheless, everybody can change his mind, including me.

26 I am impressed by your background and your demeanor
27 and your credentials, but right now, what holds greater sway
28 with me is just the terrible demeaning attitude this Board has

1 had, to the point of depression for those of us who have support
2 the Act over the years and are seeing the farmworkers humiliated
3 by means of an Act that we were so proud that we had passed,
4 finally doing something to break through this Grapes of Wrath
5 attitude that had happened.
6

7 So, I guess, Mr. Janigian, you have a tiger by the
8 tail on this issue. We'll put it over.

9 SENATOR PETRIS: Can we add to that any other
10 directors?

11 Are there any other regions, or did all these
12 incidents happen under that one region?

13 MS. HUERTA: Well, we've had similar situations --
14 well, not quite as graphic, maybe. Most of this was in Fresno
15 County.

16 We have had, on these unilateral settlements and
17 workers' cases that have just kind of been tossed out. That's
18 mostly under Mr. Pressley's jurisdiction as General Counsel. In
19 the El Centro region it's pretty bad.

20 SENATOR PETRIS: Can you comment on these unilateral
21 decisions to settle?

22 I used to tangle with your predecessor on that, and I
23 just thought it was kind of shocking, and now I find more
24 examples.

25 MR. PRESSLEY: I understand.

26 While it's not my turn at the barrel, I'll be coming
27 before you folks on August the 8th, and I'm sure I'll have to
28 face this issue.

1
2 What a unilateral settlement is, is that the General
3 Counsel feels that a fair settlement has been achieved by the
4 regional director, who is in charge of the negotiations. The
5 regional director or a member of his staff, an attorney or a
6 regional field examiner, conducts the negotiations with the
7 employer with the input from the Union.

8 SENATOR PETRIS: You're talking about the preliminary
9 stage, prior to going through the process.

10 MR. PRESSLEY: That's correct.

11 SENATOR PETRIS: I'm concerned about the one after
12 the Board has certified an amount, and then they're settled out.

13 MR. PRESSLEY: What they do, sir, is, they don't
14 certify an amount. They certify liability.

15 SENATOR PETRIS: What does that mean?

16 SENATOR PETRIS: They make a finding that there has
17 been liability based upon the recommendation of an ALJ. An
18 administrative law judge hears the testimony, hears the
19 evidence. The Board then adopts, or modifies, rejects, those
20 findings and says there is liability. We have a bifurcated
21 process.

22 SENATOR PETRIS: Meaning the employer is liable to
23 the employees for a certain amount?

24 MR. PRESSLEY: It says -- no, you're liable. We find
25 that there's unfair labor practices; we find there's bad faith
26 bargaining; we find that there's some wrong, a violation of the
27 law.

28 Now, we commence the next phase of the proceedings.

1 It's bifurcated, and we say: how much do you owe these people
2 that you have wronged?
3

4 The preparation --

5 SENATOR PETRIS: You mean the Board itself doesn't
6 fix a figure?

7 MR. PRESSLEY: No, sir. That is -- they have
8 delegated that responsibility to the General Counsel, and they
9 said: General Counsel, you, through your investigators, go out
10 and determine the --

11 SENATOR PETRIS: Well, I thought some of these,
12 especially the bad faith -- we didn't even get into that, bad
13 faith cases -- it's a matter of arithmetic.

14 You establish how many workers are involved, how many
15 days, what the pay rate was. It's a simple matter of
16 arithmetic, and you come out with this number. And that's the
17 number.

18 MR. PRESSLEY: That's true.

19 SENATOR PETRIS: Why should it be even 25 cents less
20 than that number? That's the number. Through this employer's
21 deliberate actions, really in defiance of the statute, and
22 showing bad faith, and so on and so forth, these people have
23 lost all that pay.

24 Now, what happens from there on? Why should there be
25 even any negotiations once a decision is reached and the
26 liability established? Why shouldn't it just end there, instead
27 of settling for less than one percent, or settling for
28 one-third?

1
2 MR. PRESSLEY: The next stage of the proceedings is
3 just the calculations, just as you say, the arithmetic. The
4 getting of the records from the employer to find out how much
5 these people were getting paid, how much they would have been
6 paid had they not been wronged. That is the gross amount.

7 An analogy that I would like to draw is a gross
8 paycheck as opposed to the take-home.

9 From that gross amount, which is the initial spec.,
10 which, I think, that is the amount that Ms. Huerta is referring
11 to, the \$600,000 figure, you have to build in the interest from
12 earnings of the employees when they went out and received other
13 employment.

14 SENATOR PETRIS: She mentioned that.

15 MR. PRESSLEY: Those have to be deducted.

16 Now, she was speaking of a \$600,000 figure. That was
17 the gross amount, sir. That was the initial specification
18 without deductions.

19 SENATOR PETRIS: Are you saying the final net amount
20 is because of --

21 MR. PRESSLEY: Far less.

22 SENATOR PETRIS: -- of deductions for work done in
23 the interim by the employees?

24 MR. PRESSLEY: That's part of it, sir.

25 The other factors that have to be built into it are
26 looking at the employer's defenses. There may be arguments that
27 the employer hasn't put forward yet on appeal. There may be --
28 you have to take into consideration on a case-by-case basis the

1 financial stability of the employer; whether or not, proceeding
2 to litigation, we would get anything from these people down the
3 line.
4

5 We then --

6 SENATOR PETRIS: What consideration is given to the
7 financial stability of the person who's done the work?

8 MR. PRESSLEY: The utmost, sir. That's why we're
9 trying to get as expeditious settlement as -- as quickly as
10 possible. We don't want to have these things drag out through
11 litigation, and that's what we're finding.

12 They're dragging these things through litigation to
13 the point where they're bankrupting themselves with attorneys'
14 fees. And by the time we get around to exhausting all the
15 appeals, there's nothing left.

16 And that's -- those are the factors that I take into
17 consideration when I say --

18 SENATOR PETRIS: Who's doing the dragging of the
19 litigation.

20 MR. PRESSLEY: The respondent, sir.

21 MS. HUERTA: The growers.

22 SENATOR PETRIS: Yes, the growers.

23 Well, that's the choice they make, I suppose. The
24 just fight --

25 MR. PRESSLEY: It's within their rights.

26 SENATOR PETRIS: Do they fight every single decision
27 that they don't like?

28 MR. PRESSLEY: They seem to --

1
2 SENATOR PETRIS: Have they ever accepted those
3 decisions and said: Yeah, we --

4 MR. PRESSLEY: I've been in this position for a
5 whopping three months, but I've been there three years, and I
6 haven't seen one yet where they've just conceded that they've --

7 SENATOR PETRIS: Doesn't that suggest to you the same
8 kind of attitude I'm talking about with respect to the
9 administration?

10 MR. PRESSLEY: I would say that it reflects the
11 attitude of the employer, that he doesn't want to pay top
12 dollar, yes, sir.

13 SENATOR PETRIS: I mean, even the toughest insurance
14 companies, in personal injury cases, often reach settlements
15 before and after judgment; right?

16 MR. PRESSLEY: Yes.

17 SENATOR PETRIS: They don't do it so much in workers
18 comp. I'm checking out workers comp. cases now where companies,
19 repeatedly ordered by the judge to pay X dollars, and they
20 absolutely refuse to do it. They're ordered to pay for surgery
21 in advance of a person that's sorely in need of delicate back
22 surgery; they refuse to do it.

23 I don't understand. I don't know what kind of a
24 civilization they think we're living in.

25 MR. PRESSLEY: They only get hit with a 10 percent
26 penalty, I guess. I don't know.

27 In our case, we don't have that. We're a remedial
28 remedy. And as such, we don't have the penalties.

1 SENATOR PETRIS: It doesn't cost them anything?

2 MR. PRESSLEY: Only additional interest that accrues.

3 SENATOR PETRIS: Should we amend the law and put
4 those in? I won't quote you if you want to tell me.

5 [Laughter.]

6 SENATOR PETRIS: But that is a factor, you feel?

7 MR. PRESSLEY: It certainly is a factor. It's
8 something that we look at in order to determine whether or not
9 we should settle a case.

10 The case, again, that Ms. Huerta makes reference to,
11 it's true. I entered into a unilateral settlement just this
12 last week for \$263,000, plus the employer's portion of the FICA,
13 which is \$15,000.

14 It was the demand of the Union at that time to settle
15 for \$278,000, so I felt that it was a fair settlement.

16 Again, it has to be reviewed by the Board.

17 It only -- sir, it only reflects 83 percent of the
18 amount that is owed in the final specification. The \$600,000
19 figure is, remember, the gross specification and doesn't reflect
20 the interim earnings or the defenses, or any of the other things
21 that you have to take into consideration.

22 SENATOR PETRIS: I don't think anybody's going to
23 quarrel about the interim earnings. That's why Ms. Huerta
24 mentioned that.

25 MR. PRESSLEY: But that's the confusion over the 10
26 percent, sir.

27 There's never been a case settled, to my knowledge,
28

1
2 for less than 70 percent of the final specification.

3 SENATOR PETRIS: We had plenty of them in the past
4 before your time. I remember that. I remember 20, 25 percent
5 was not uncommon, 30 percent.

6 Well, thanks, Mr. Chairman. I don't want to take any
7 more time.

8 I really would like to have at least this one
9 regional director, and more if it involves more, to come in and
10 explain that to us.

11 CHAIRMAN ROBERTI: Thank you, Senator. We shall do
12 that.

13 We will put Mr. Janigian's confirmation over for some
14 testimony and a vote until -- how's next week?

15 MS. MICHEL: We have three options: you have next
16 week; the 5th of July, on a Thursday; and then you go to the 8th
17 of August, or then the 15th of August.

18 CHAIRMAN ROBERTI: Well, there's an outside chance we
19 are going to be here on the 4th of July.

20 MS. MICHEL: We are scheduled to meet on the 5th.

21 MR. JANIGIAN: Mr. Chairman, if I could suggest --

22 CHAIRMAN ROBERTI: Yes, please, Mr. Janigian.

23 MR. JANIGIAN: Our General Counsel's confirmation
24 hearing is on the 8th. We might be able to combine this --

25 CHAIRMAN ROBERTI: Good idea. It'll be ALRB day.
26 August 8th, that's fine. That gives us enough time on the
27 Floor, too.

28 Thank you very much. That should solve it.

1 MR. PRESSLEY: Thank you very much.

2 CHAIRMAN ROBERTI: We're going to break for five
3 minutes.
4

5 [Thereupon a brief recess was taken.]

6 CHAIRMAN ROBERTI: The Senate Rules Committee will
7 come to order.

8 The next appointment is Dorothy J. Lee, Member of the
9 State Board of Education.

10 MS. LEE: Thank you very much, Senator Roberti and
11 Members of the Rules Committee.

12 I'm very, very pleased to be here, and it's a great
13 honor for a classroom teacher to be nominated to this position.
14 And my colleagues and I are thrilled; my classroom students are
15 thrilled about this.

16 I do need to relate some activities about my students
17 to you, because if I go back to Ventura and they see me, they'll
18 say, "Did you tell them?" And I want to say, "Yes, I did."

19 We have a very fine public school system, and the
20 children are experiencing a lot of successes, and I'd just like
21 to tell you a few.

22 Before I do that, I guess I should say that I have
23 taught all grades from kindergarten to sixth grade. I've been a
24 vice principal, a teacher in charge, and a summer school
25 principal in the City of Ventura at seven different schools.
26 So, that's what I bring to this Board of Education.

27 My students are fifth graders. I have four fourth
28 graders, and in a school that is half Hispanic, half Anglo, one

1 percent Asian, one percent Black, and one percent American
2 Indian.

3
4 My job, when I went into the fifth grade, was to have
5 them all pass the fifth grade proficiency test by writing a
6 paragraph, five sentences. So, I thought all summer about how I
7 would do this. I thought of the question of the day, so every
8 day, besides the homework, I gave the children a research
9 question, like: what is the name of our Mayor.

10 We invited the Mayor to come visit us, and he came to
11 visit our class.

12 And then, who is our Congressman? How do you spell
13 his name? Our Congressman is Robert J. Lagomarsino, so they had
14 to learn how to spell his name, and find out what district, the
15 19th Congressional District.

16 And then, when George Bush was inaugurated, I said:
17 Go home and find out who he's going to have in the Cabinet. So,
18 I thought, well, this is real hard for nine-year-olds and ten-
19 year-olds. So, they went home and they came back, and they had
20 a whole list of names: who's going to be Secretary of
21 Transportation, and so forth. And they said, "What do we do
22 with John Tower's name?" I said, "Put him on the list." Then I
23 had to eat my words.

24 But it shows that one thing, that they are aware, and
25 they know when things are happening. They know about current
26 events. Each day, when they came back with their research
27 question, they had to write an essay of five -- a five-sentence
28 essay, punctuated corrected, and so forth. And they did that

1
2 every day, and every day they began to ask, "What's our question
3 of the day going to be?" I said, "Well, whatever you do, just
4 don't call 9-1-1," because 9-1-1 has some of the answers, and I
5 said, "That's only for emergencies."

6 So, some of the parents would come to me, and they
7 say, "I thought I knew a lot, but this question of the day is a
8 very humbling experience."

9 So, they did that every day for the whole year. And
10 then it was time, in April, for the CTBS, the California Test of
11 the Basic Skills. I thought: well, we're going to take this
12 test. And then the children kept waiting: what did I get on
13 the test; what did I get on the test. Finally, on the last day
14 of school, June 14th, the test results came in, and they all
15 asked me, "What did I get?"

16 So, I looked at them, and they were pretty good for
17 children that -- in a middle-income area. And so, a couple of
18 them got grade levels of fifth grade, but some of them got
19 seventh grade, eighth grade, ninth grade, and tenth grade. So,
20 was very, very pleased that they went out and did all that
21 research everyday.

22 But the children are very successful in school, and
23 they have so many activities for them. We have a DARE officer
24 that's my team teacher. He comes in and spends all day on
25 Thursdays, and he does so much to improve their self-esteem, to
26 raise their self-esteem.

27 Great things are happening in our schools. We are
28 one of the ten elementary schools that was the Distinguished

1 School last year. This year, two of our middle schools received
2 the Distinguished School Award, and then one of our elementary
3 schools was nominated for the National Schools Award.
4

5 Outside of the classroom, I work at U.S.C. on
6 Tuesdays on the Alumni Board and the Educari Board, the support
7 groups for the School of Education. I've served on their boards
8 for 20 years, going through four deans: Dean Melbo, Dean
9 Knechenich, Dean Orr, and Dean Henschke. Working on workshops,
10 conferences and seminars, and keeping up on what the University
11 has to offer.

12 This summer, the University is offering an eight-week
13 course for gifted new, young teaches to work in the inner city
14 and where the teacher shortages are. It's kind of like a Peace
15 Corps group. There are 200 young students in this program at
16 U.S.C.

17 I'm also very pleased that we have the Nobel Chair at
18 U.S.C., the Naslund Chair, and we're looking for the very best
19 professors to fill those two chairs, and we find that they're
20 right here in California. So, we're really proud of the
21 educational resources right here in our own state.

22 With Proposition 98, it is required for each school
23 to have a School Accountability Report Card, and I have brought
24 a copy of one of these for each one of you. This was sent home
25 towards the end of the school to all the parents, telling about
26 student achievement, attendance, services, class size, teacher
27 assignments, the materials, counseling, about the substitutes,
28 teacher evaluation, discipline, training, and the quality of

1 instruction.

2
3 For our CAP scores in grade three in the last three
4 years, our scores were: 92, 98, and 90. Writing experience:
5 91, 99, 95. So, we're very proud of what we have accomplished
6 at our school.

7 I'll leave these here for you.

8 At the beginning of school, when the parents come to
9 the open house, we have this folder that we share and give to
10 hem. This has the standards of expected pupil achievement,
11 which is closely correlated with the State model curriculum, and
12 it has the name of the School Board members of all the schools
13 in our district, the 25 schools, and has information about what
14 time school starts, and how parent volunteers can help us. We
15 have a lot of parent volunteers that help us. And it also has
16 how much the lunch costs, and so forth. And on the back, it has
17 the traditional year calendar and the year-around calendar. We
18 have both calendars going on. We have 25 schools in Ventura,
19 and 15,000 students.

20 When I taught sixth grade, I really wanted my
21 children to want to come to school and to have perfect
22 attendance, so I had a lot of interesting projects. We all
23 worked from the beginning of the year towards going to our
24 outdoor education program. And finally, we did have so many
25 projects that the children didn't ever want to miss school. And
26 I feel that my interest in this area will help the at-risk and
27 dropout students.

28 Our school is half bilingual. Over half of our

1 students are bilingual students. We have eight fantastic
2 bilingual teachers at our school, four bilingual aides, and our
3 announcements are all sent out in Spanish and in English. Our
4 programs, we have translators, and when we put on our school
5 musical, we sang the songs in Spanish and translated them into
6 English, or sang them in Spanish -- or in English and translated
7 them to Spanish -- however it goes.
8

9 But we have bilingual parents, non-English speaking
10 parents, that come to school and serve on our PTA board, which
11 really thrills me because they feel at home at our school, and
12 they feel at home in our programs.

13 So, we do have a lot of parents helping us. We have
14 businesses that help us.

15 We -- our school has been adopted by Carl's Junior
16 and so forth, and we have field trips, and we go there for
17 career education tours.

18 Are there any questions?

19 CHAIRMAN ROBERTI: Any questions of Ms. Lee?

20 You love your school. I can tell that.

21 SENATOR PETRIS: I have one question.

22 I notice in your biographical sketch here that you
23 have a bachelor's degree in industrial relations.

24 MS. LEE: Yes.

25 SENATOR PETRIS: Would you like to serve on the ALRB?

26 [Laughter.]

27 MS. LEE: You know, Clark Kerr was one of my students
28 -- one of my professors there, and it was the very beginning of

1 the ALRB.

2
3 CHAIRMAN ROBERTI: Is there anyone in opposition to
4 the apointment?

5 Well, I think you may be getting off easy,
6 Ms. Lee.

7 Do I hear a motion?

8 SENATOR BEVERLY: Move the nomination.

9 CHAIRMAN ROBERTI: Senator Beverly moves the
10 nomination be passed to the Floor.

11 Secretary will call the roll.

12 SECRETARY WEBB: Senator Beverly.

13 SENATOR BEVERLY: Aye.

14 SECRETARY WEBB: Senator Mello. Senator Petris.

15 SENATOR PETRIS: Aye.

16 SECRETARY WEBB: Senator Craven.

17 SENATOR CRAVEN: Aye.

18 SECRETARY WEBB: Senator Roberti.

19 CHAIRMAN ROBERTI: Aye.

20 The vote is four to zero; confirmation's recommended
21 to the Floor.

22 Congratulations.

23 MS. LEE: Thank you so much.

24 CHAIRMAN ROBERTI: Senator Craven moves the call be
25 lifted on Christine Diemer-Reed. Without objection, such will
26 be the order.

27 Secretary, call the roll.

28 SECRETARY WEBB: Senator Beverly.

1
2 SENATOR BEVERLY: Aye.

3 CHAIRMAN ROBERTI: The vote is five to zero;
4 confirmation is recommended to the Floor.

5 Senator Craven moves that the call be lifted on
6 Kathryn Dronenburg. Without objection, such will be the order.

7 Secretary will call the roll.

8 SECRETARY WEBB: Senator Beverly.

9 SENATOR BEVERLY: Aye.

10 CHAIRMAN ROBERTI: The vote is five to zero;
11 confirmation is recommended to the Floor.

12 Congratulations to all of you.

13 The next appointment is S. William Malkasian, Member
14 of the State Board of Education.

15 Mr. Malkasian, we'll ask you what we ask the
16 Governor's Appointees, and that is why you feel you're qualified
17 to assume this position.

18 MR. MALKASIAN: Mr. Chairman, Members of the board,
19 thank you for hearing me this evening.

20 In the area of education, first of all, I wanted to
21 be on the Board simply because I think there's some work that
22 has to be done, and I have work to continue as a member of the
23 Board, and I think I can do some good.

24 My qualifications, I taught history and English in
25 high school here in Sacramento. I'm originally from Boston,
26 Massachusetts and had all my training there. And then I went on
27 to become a vice principal and a principal of a junior high
28 school.

1
2 From then on, my role took a complete turn, because
3 during those years, later on, we had the problems of the White
4 fright, and the minority problem, what have you. And all of a
5 sudden, I was thrust into the role of going into schools and try
6 to straighten them out and get them back on the right track,
7 which I did. And, of course, it became a very rewarding
8 experience for me.

9 I spent 32 years in education, mostly on the high
10 school level. And at the present time, I'm the co-director of
11 an international academy out at Sacramento State University
12 which deals with the Pacific Rim countries. And of course, this
13 year we're also including Eastern European countries. Subjects
14 such as: Japanese, Chinese, Russian, advanced Spanish, and
15 studying all the socioeconomic and political aspects of those
16 different countries. And what we're doing is, we're dealing
17 with high school students on a summer school basis.

18 Actually, it was a spin-off from the International
19 Baccalaureate Program which is based in Zurich, Switzerland, and
20 originally was established for members of families of the
21 ambassadors and consulate people, and that sort of thing.

22 My educational experiences have been mainly with
23 teaching and helping minority youngsters, and pushing the
24 bilingual programs, trying to keep them in school. And one of
25 the things we talk about, you know, and they kick it around, is
26 at-risk students. And of course, I changed that around and call
27 it at-risk schools. And we talk about dropouts; we talk about
28 curriculum, and all these kinds of things.

1
2 There's an awful lot of work to be done in this
3 state. We're moving, and we all want to move faster. We've got
4 to keep these kids in school, and that's part of my function.

5 Hopefully, as a member of the State Board of
6 Education, I can perform those kinds of duties and convince
7 school people that they ought to push a little harder in what
8 they're doing, and be concerned about youngsters rather than
9 themselves and their upward mobility. And that's a big problem.

10 Any questions?

11 CHAIRMAN ROBERTI: Thank you, Mr. Malkasian.

12 Any questions? Senator Petris.

13 SENATOR PETRIS: Was that a state college, Saginaw?

14 MR. MALKASIAN: Sacramento State.

15 SENATOR PETRIS: Oh, Sacramento State. I thought you
16 were back in Michigan.

17 MR. MALKASIAN: No, no, Sacramento State University.

18 CHAIRMAN ROBERTI: Is there any opposition in the
19 audience?

20 SENATOR CRAVEN: Move the nomination to the Floor.

21 CHAIRMAN ROBERTI: Senator Craven moves that the
22 nomination of Mr. Malkasian be recommended to the Floor.

23 Secretary will call the roll.

24 SECRETARY WEBB: Senator Beverly.

25 SENATOR BEVERLY: Aye.

26 SECRETARY WEBB: Senator Mello. Senator Petris.

27 SENATOR PETRIS: Aye.

28 SECRETARY WEBB: Senator Craven.

1
2 SENATOR CRAVEN: Aye.

3 SECRETARY WEBB: Senator Roberti.

4 CHAIRMAN ROBERTI: Aye.

5 The vote is four to zero; confirmation is recommended
6 to the Floor.

7 MR. MALKASIAN: Thank you, gentlemen. I appreciate
8 it.

9 CHAIRMAN ROBERTI: The next is Ms. Gerti B. Thomas,
10 member of the State Board of Education.

11 Ms. Thomas, we'll ask you what we ask all the
12 Governor's Appointees, and that is why you feel you're qualified
13 to assume this position.

14 MS. THOMAS: Thank you, Mr. Chairman, Honorable
15 Members of the Senate Rules Committee.

16 I'm Gerti B. Thomas, and my main concern or
17 qualification to remain as a member on the State Board of
18 Education in California is my interest and concern for the youth
19 in this state, which it should be our top priority.

20 As a mother of two and a grandmother of two children
21 who have and are experiencing the educational system in our
22 state, I have some serious concerns about some of the things
23 that we need to be doing. Let me share some of those with you.

24 I'm concerned about the high dropout rate in our
25 state, and especially in my own area where it's approximately 40
26 percent.

27 I'm concerned also that our young people are coming
28 out of school, if not dropping out, without marketable skills.

1 In this state, we have stigmatized vocational technical
2 education, and our young people who are not college-bound are
3 not receiving marketable skills to come out and function in
4 society, thus they become victims, I say, of our social welfare
5 system and are no good to society or to themselves.
6

7 I'm also concerned about bilingual education. In
8 fact, I'm concerned about multilingual education. I understand
9 in Los Angeles County, they have about 80-some languages. I
10 don't think a child can learn if the child can't communicate and
11 not understand what is being taught.

12 I also advocate having bilingual aides in the schools
13 who speak English and the native tongue of the young people so
14 they can assist the teachers in communicating with these young
15 people.

16 I have been on the Board for six months, and during
17 those six months I've learned a lot, and I've shared a lot. I
18 feel that I can have some input in what's happening in our
19 state.

20 We have, on the Board, prepared our plan of work, and
21 we have concentrated on youth at risk. I feel all youth are at
22 risk in our society today, but especially our young people in
23 the inner cities.

24 We are concentrating on teacher shortage, which
25 includes credentialing. We are concentrating on accountability
26 for physical programs, student performance, and also on
27 curriculum.

28 We're interested in parent involvement. We feel that

1 in many instances, the parents have abdicated. We need to have
2 those parents involved, and we need to also work closer with our
3 teachers because they are second to parenting in our educational
4 system or the growing of our youth.

5
6 I was a member of the -- as of the 30th of this
7 month, the sunset of the Self Esteem Task Force, to promote self
8 esteem and personal and social responsibility. Many of the
9 social ills that we discuss affect our youth more than any other
10 members of our society. And I was very pleased to have a part
11 in that situation.

12 I am also the Director of a program, a 4-H Program,
13 in Alameda County, and we have a career awareness program in our
14 junior and middle schools. I think if we don't catch them then
15 -- and they say if you don't catch them by the fourth grade,
16 that they become disinterested. We're working in our junior and
17 middle schools with our young people, having members of various
18 professional business and industries come out and talk to our
19 young people and encourage them to stay in school.

20 I'm very sincere and concerned about the education of
21 our youth in this state. I'm honored to be a member of the
22 State Board, and I would appreciate your confirmation.

23 CHAIRMAN ROBERTI: Thank you very much, Ms. Thomas.

24 Are there any questions?

25 Senator Petris wants to make the motion.

26 Is there any opposition? I think you're going to get
27 off easy, too.

28 Senator Petris.

1
2 SENATOR PETRIS: I'm proud to nominate or move the
3 confirmation of my distinguished constituent.

4 CHAIRMAN ROBERTI: Senator Petris moves your
5 nomination.

6 Is there any discussion or debate? Then the
7 Secretary will call the roll.

8 SECRETARY WEBB: Senator Beverly.

9 SENATOR BEVERLY: Aye.

10 SECRETARY WEBB: Senator Mello. Senator Petris.

11 SENATOR PETRIS: Aye.

12 SECRETARY WEBB: Senator Craven.

13 SENATOR CRAVEN: Aye.

14 SECRETARY WEBB: Senator Roberti.

15 CHAIRMAN ROBERTI: Aye.

16 The vote is four to zero; confirmation is recommended
17 to the Floor.

18 Congratulations.

19 MS. THOMAS: Thank you very much.

20 CHAIRMAN ROBERTI: You're welcome.

21 [Thereupon this portion of the
22 Senate Rules Committee hearing
23 was terminated at approximately
24 6:10 P.M.]

25 --oo0oo--
26
27
28

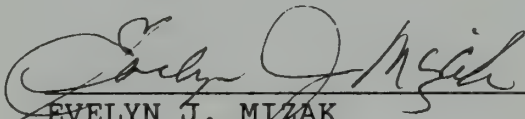
CERTIFICATE OF SHORTHAND REPORTER

I, EVELYN J. MIZAK, a Shorthand Reporter of the State of California, do hereby certify:

That I am a disinterested person herein; that the foregoing Senate Rules Committee hearing was reported verbatim in shorthand by me, Evelyn Mizak, and thereafter transcribed into typewriting.

I further certify that I am not of counsel or attorney for any of the parties to said hearing, nor in any way interested in the outcome of said hearing.

IN WITNESS WHEREOF, I have hereunto set my hand this 2nd day of July, 1990.


EVELYN J. MIZAK
Shorthand Reporter

